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A  
TREATISE upon FINES;

TO WHICH IS ADDED, SOME

GENERAL OBSERVATIONS.

ON THE NATURE OF

Deeds leading, and declaring the Uses.

OF

FINES, and RECOVERIES.

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By JAMES CHETWYND, ESQUIRE,  
BARRISTER AT LAW.

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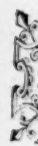




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## C O N T E N T S.

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## TREATISE upon FINES.

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### SECT. I.

Of FINES in general, their Nature, Antiquity,  
and Definition, by ancient Authors.

**A** FINE is a very usual Species of Assurance for the settling and conveying Lands and Tenements, which are acknowledged by one of the Parties to be the Right of the other, in a fictitious Suit instituted for that Purpose, and finally agreed by Licence from the King, before the Justices of the Common Pleas, or others duly authorised; and it therefore has been called *A Feoffment on Record*, and is one of those Modes of Conveyance whereby a Freehold may pass by the common Law without any Livery of Seizin. <sup>a</sup> Sir Edward Coke, in his first Reading on the Statute of Fines, expresses himself thus: "a Fine being one of the highest Matters of Record, was first instituted for the quiet establishing, and sure settling, Mens Inheritances;" the Statute *de Finibus* says, it is called a Fine, *quia Finis finem litibus imponit*: For as the Common Law has provided a safe and sure way to get the Property

<sup>a</sup> Co Lit. 50.1.

<sup>b</sup> 1 Co Read. 2.

<sup>c</sup> 27 E. 1.

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of

of Goods by Sale in Market overt, so the same Common Law has ordained a sure Manner of Conveyance for the Purchasers of Lands; *scilicet*, by Fine.

As for the Antiquity of Fines, they are supposed to have  
 \* Plowd. 357. been coeval with our Courts of Record, and <sup>d</sup> Lord Catline  
 on his Argument in *Stowel's Case*, cited some before  
 • ibid. 369. the Conquest<sup>e</sup>. They are mentioned by all the ancient  
 Writers on our Law, from the Time of *Henry* the Second,  
 whose Chief Justice, *Glanville*, gives this Definition of them;  
 † L. 8. c. 1. *Finis est amicabile Compositio, et finalis Concordia ex Con-*  
*sensu, et Licentiâ Domini Regis, vel Jusficiariorum.* Again,  
 ‡ L. 9. c. 3. *Talis concordia finalis dicitur eo quod Finem imponit negotio,*  
*adeo ut neutra pars litigantium ab eo de cætero poterit recedere.*  
 And *Bracton*, who wrote in the Time of *Henry* the Third,  
 § L. 5. c. 28. speaks thus of them: <sup>h</sup> *Finis ideo dicitur finalis concordia, quia*  
*imponit Finem litibus, et est exceptio peremptoria*; so that it  
 appears clearly, that at the Time when these Authors wrote,  
 Fines were well known, and established; and the Reason  
 why they are allowed to be of Force sufficient to bind those  
 whom the Law generally disables in other Cases, is, be-  
 cause the Concord is made by Leave of the King, or his Ju-  
 stices; and therefore all Presumption of Fraud, and De-  
 ceit, is excluded; the King and his Court of Justice being  
 supposed to be privy to the Act. And this is esteemed a  
 Conveyance of greater Security than a Feoffment, or the  
 Investiture by Livery, being not only equivalent to the No-  
 toriety of Livery, but having the constant and undoubted  
 Credit of a Court of Record to protect and support it; and  
 this farther Convenience and Security, that it does not  
 only transfer the Right of the Vender, and all claiming  
 under him, but likewise extinguishes the Right of others  
 who omit to make their Claim in due Time, as will be  
 shewn hereafter.



## S E C T. II.

## Of the different Sorts of FINES.

**F**INES are most commonly divided into these four Sorts; viz. 1. A Fine *sur conusans de Droit come ceo que il ad de son Done*; 2. A Fine *sur conusans de Droit tantum*; 3. A Fine *sur concessit*; 4. A Fine *sur Done, Grant, et Render*: And these are made use of according to the Estate which is intended to be granted, and are subject to another Division; that is, they are either executed, or executory.

\* A Fine is said to be executed not because the \* Conussee is immediately in Possession, but because the Fine is executed between the Parties; so that the Conussee cannot sue Execution, for the Fine in itself is supposed to be executed.<sup>a</sup> A Fine is said to be executory, because such a Fine does not suppose any Execution, but the Conussee may execute it either by Entry, or by suing out a proper Writ of Execution.

<sup>a</sup> 2 Co. Read. 4.  
<sup>2</sup> Inst. 513.

<sup>b</sup> A Fine *sur conusans de droit come ceo que il ad de son Done*, is said to be the most principal Fine, and <sup>c</sup> a Fee-simple may pass by it without the Word *Heirs*, in respect of the Height of such a Fine, and because it supposes a precedent Gift to have been made in Possession to the Conussee. <sup>d</sup> But tho' such a Fine generally implies a Fee-simple, yet as it is only by Implication, it is no Repugnancy to limit an Estate for Life to the Conussee, for the precedent Donation or Feoff-

<sup>b</sup> 2 Inst. 513.  
<sup>c</sup> Shep. Touch 4.  
<sup>d</sup> Co. Lit. 9.

<sup>d</sup> 1 Salk. 340.  
<sup>2</sup> Co. Read. 4.

\* The Party levying the Fine is called the *Censusor*, and he to whom it is levied the *Conussee*.

ment



ment, which is supposed might be for Life only, or in Tail, and the general Intendment of the *Conusans* may be qualified by the express Limitation. This is also a Fine executed by Reason of the supposed precedent Gift, so that the Conusee, if not in Fact in Possession, may presently enter; <sup>§ 2 Co. Read. 4.</sup> and if such a Fine is levied of a Rent, Common, Advowson, or other Thing that lies in Grant, the Conusee has a Freehold in Law in him before any actual Possession, or Seizin\*.

If a Fine *sur conusans de droit come ceo, &c.* is levied of Land, and before Entry by the Conusee a Stranger enters and dies seized, neither the Conusor nor Conusee have any Remedy; but if, after the Fine levied, the Conusor continues his Possession, and dies seized, the Conusee may enter upon his Heir.

<sup>2</sup> Inst. 51.

<sup>1</sup> A Clause of Warranty is inserted in this Fine.

There are also two other Kinds of Fines that are executed, *viz.* A Fine *sur release*, and a Fine *sur surrender*.

<sup>1</sup> Shep. Touch. 4.

<sup>1</sup> No Rent can be reserved upon a Fine *sur conusans de droit come ceo, &c.*

2. A Fine *sur conusans de droit tantum*: And this is most commonly used to pass a Reversion; or if such a Fine is levied by Tenant for Life to him in Reversion, or Remainder, it will operate by way of Surrender.

<sup>3</sup> Co. Read. 5.

<sup>1</sup> If there is Lessee for Life, the Remainder for Life and the Lessee for Life levies a Fine *sur conusans de droit tantum*.

\* All the Right that the *Conusor* had in Possession, and the *Conusee* could seize, passed by this Covoyance; but, the Right of Action and of Distress did not pass without Attornment. *Gilb. Ten.* 93.

for

to him in Remainder for Life, this shall enure by way of Surrender; but if he, in the Remainder for Life, accepts a Fine *sur conusans de droit come ceo*, &c. from the Tenant for Life, this is a Forfeiture of both their Estates, and shall not enure by way of Surrender, but he, in the Reversion, may immediately enter for the Forfeiture.

<sup>1</sup> A Fine *sur conusans de droit tantum* is executory, and to execute it the Conufee may have a *scire facias*, and it conveys a Fee-simple without the Word *Heirs*; for every Fine *sur conusans de droit* is to be intended of a Fee-simple,<sup>m</sup> and <sup>b</sup> the Conufee has a Freehold in Law in him before Entry.

<sup>n</sup> Where a Fine is levied of the Reversion of Land, the Writ of Covenant is of the Land itself, and the Concord is, "That the aforesaid (the Conufor) hath acknowledged the Tenements aforesaid, with the Appurtenances, to be the Right of the said R. and hath granted for himself and his Heirs, that the Tenements aforesaid, with the Appurtenances, which H. the Day when this Agreement was made, held for the Term of his Life, of the Inheritance of the aforesaid (the Conufor), and which after the Death of the said H. ought to revert to the aforesaid (the Conufor) and his Heirs, shall immediately after the Death of the said H. remain to the aforesaid R. and his Heirs."

<sup>o</sup> This Fine also contains a Clause of Warranty.

<sup>o</sup> 6 Co Read. 72

3: A Fine *sur concessit*. This is also a Fine executory, so that if the Conufee is not in Possession, he must either enter, or have a Writ of *habere facias seisinam*, &c.

<sup>p</sup> This Fine is commonly used to grant Estates for Life, or Years, which may be done reserving a Rent, or the like <sup>q</sup> for

<sup>p</sup> West. Sym.  
p. 2. f. 30.  
<sup>q</sup> West. Sym.  
p. 2. f. 66.

for it operates as a new Grant, the Conusor neither acknowledging any former Gift to have been made by him, nor any former Right in the Conufee.

4. A Fine *fur Done, Grant, et Render*, which is used to create particular Limitations of Estates. This is a double Fine, being in a Manner Two Fines, that is, a Fine *fur conufans de droit come ceo*, &c. and a Fine *fur concessit*, both formed into One, whereby the Conufee, after Release, and Warranty made to him by the Conusor of the Land contained therein, doth grant, and render back to the Conusor the Lands themselves or some Rent, Common, or other Thing out of them, to the Conusor<sup>a</sup>, as is agreed between them, thereby oftentimes limiting Remainders to Strangers not named in the Writ of Covenant. In this Case the Conufee is but an Instrument, and has a Seizin only for an instant<sup>b</sup>, whereof his Wife will not be endowed.

<sup>a</sup> Shep. Touch.  
4.

<sup>b</sup> 2 Co. 77.  
Co. Lit. 31. b.

<sup>c</sup> 6 Co. Read. 8.  
<sup>2</sup> Inst. 513.

<sup>c</sup> This Fine is also executory, and it is to be observed that a *Grant* and *Render* can only be made upon a Fine executed: For if a Man levies a Fine executory as *fur conufans de droit tantum* to *I. S.* he cannot grant and render the Lands back to the Conusor, because the Conufee has nothing in the Lands till Execution sued.

<sup>d</sup> 2 Inst. 514.

<sup>d</sup> There is a great Diversity between the Fine *fur Grant* and *Render*, which contains a double Fine, and a Fine *fur conufans de droit come ceo*, &c. for the latter must be levied of the Land, *etc.* mentioned in the Writ, but the *Grant* and *Render* may be of another Thing than is mentioned in the Writ, as if *A.* bringeth a Writ of Covenant against *B.* of the Manor of *D.*; *B.* cannot levy a Fine to *A.* of a Rent issuing out of the Manor of *D.* but must levy the Fine

of the Manor of *D.* according to the Writ, and his Covenant therein expressed, but *A.* may *Grant* and *Render* to *B.* a Rent out of the same Manor mentioned in the Writ, but not out of any other Land, neither can the *Grant* and *Render* be of any Thing collateral to the Land or other Thing contained in the Writ, or of another Nature, and neither issuing out of, nor incident to the Land, *etc.* contained in the Writ.

\* Also a single Fine cannot be levied to any Person, who is not party to the Writ of Covenant, neither can the *Grant* and *Render* of the Land, *etc.* be immediately in *primo gradu* to any, who is not Party to the Writ of Covenant, but mediately, or in *secundo gradu*, it may. As if a Writ of Covenant is brought by *A.* against *B.* of the Manor of *D.* and *B.* levies a Fine thereof *come ceo*, &c. to *A.*; *A.* may *Grant* and *Render* the same to *B.* for Life or in Tail, the Remainder to *F.* in Fee: For although the Writ of Covenant is *inter A. Quer. and B. Deforc.*, so as *F.* is a mere Stranger to the Writ, yet seeing he taketh it by way of Remainder depending upon an Estate warranted by the Fine, it hath been allowed in our Books, and compared to the Case of a Deed indented made between *A.* and *B.*; whereby although no Estate can be limited in the *habendum* immediately to a Stranger to the Deed, yet if *A.* doth give Lands to *B.* to have and to hold to *B.* for Life or in Tail, the Remainder to *C.* in Fee, who is a Stranger to the Deed, that will be good.

<sup>e</sup> 6Co.Read.8.  
<sup>2</sup> Inst. 514.

If Two levy a Fine the *Grant* and *Render* may be to One of them. Therefore if Baron and Femelevy a Fine, the *Grant* <sup>f</sup> 6Co.Read.8. *et Render* may be to the Baron and his heirs for ever: Also the.



the Conufee may *Grant* and *Render* Parcel to the Baron only, and the other Parcel to him and his Wife.

If the Writ of Covenant is brought by Two, the Defendant may acknowledge the One Moiety to the one, and the other Moiety to the other, or one Part in feveralty to the One, and the other Part in feveralty to the other; or may levy a Fine immediately to One of them, the Remainder to the other, or levy a Fine to One of them, rendering Rent, and by the same Fine grant the Reversion to the other. <sup>b</sup> But if *A.* levies a Fine to *B.* and *B.* renders to *A. habendum ei* and *E.* his Wife, *et hæredibus quos A. procreabit de corpore E.* there *E.* hath nothing, for she was not named in the Premises, but only in the *habendum*, and was not Party to the Writ of Covenant.

6 Co. Read.  
2.

If *A.* levies a Fine to *B. sur conufans de droit come ceo*, &c. and *B.* by the same Concord doth *Grant* and *Render* the same Land back again to *A.* for Life without Impeachment of Waste, the Remainder to *C.* the Wife of *A.* for her Life, the Remainder to *A.* and his Heirs, this is a good Concord, and by this Device a Jointure may be, and is oftentimes made. And if a Man would have a Lease for Life or Years made by Fine, the Lessee must by the Concord acknowledge the Lands to be the Right of the Lessor (who is seised of the Land) as that, *etc.* and then the Lessor must *Grant* and *Render* the same Land back again to the Lessee (the Conufor in the Fine) for Life, or for a certain Number of Years, as the Agreement is, reserving Rent with Clause of Distress; and this is a good Fine, and a common Device for that Purpose. But if the Lessor is Tenant in Tail, it seems this Fine will not bar the Issue in Tail, unless executed in the Life of the Tenant in Tail. And yet if *A.* Tenant in

v. PoR. 27.



Tail and N. do by Fine acknowledge the Land to be the Right of a Stranger as that, *etc.* and then the Stranger that is Conufee doth grant and render the Land to N. for Life or Years with Clause of Distress, *etc.* and then grants and renders the Reversion to the Tenant in Tail; this is a good Fine, and will bar the Issue in Tail also, and will pass the Rent and Reversion to the Tenant in Tail.



B

S E C T.

## S E C T. III.

## Of the several Parts of a FINE.

A FINE being an Agreement, or Concord, acknowledged and recorded in a Court having competent Jurisdiction, it is necessary for the Parties to appear judicially before those Justices under the Sanction of whose Presence the Act is to be performed, and this is to be done by commencing a Real Action, now most commonly upon a Writ of Covenant brought against the Person who is to levy the Fine; and he appearing in Court, on the Return of that Writ, does it accordingly.

<sup>a</sup> 3 Co. 38. b.  
Shep. Touch.  
3.

<sup>b</sup> Plowd. 394.  
<sup>a</sup> Inst. 513.  
<sup>c</sup> Cro. El. 300.

\* There are five Parts of every Fine; that is to say, First, an Original Writ, as appears by the Statute *de modo levandi Fines*. \* But if there is no Original Writ, yet the Fine is not void, but voidable by Writ of Error. \* Where the Sheriff is One of the Deforceants, the Writ must be directed to the Coroner, otherwise it is not good.

<sup>a</sup> 3 Co. 390.  
<sup>a</sup> Inst. 511.

II. \* There ought to be a Leave, or Licence, to agree, for which Licence there is a Fine due to the King, which is called *Finis pro licentia concordandi*, and the Reason that this Fine is taken is because the King loses by the Concord the Fines, or Amerciaments, which would have been due to him upon the Judgement, or Nonsuit, and other Advantages. This Fine *pro licentia concordandi* is an Ancient Flower of the Crown, and is called the King's Silver, and the Post Fine, in respect of the Primer Fine, or Fine in  
the

the \* Hanaper. For in every real Action of Lands or Tenements of the yearly Value of Five Marks, there is due in the Hanaper upon the Original 6s. 8d.; viz. for every Five Marks of Land 6s. 8d.; and the Fine *pro licentia concordandi* is always as much as the Primer Fine, and Half as much more.

\* The Usage is, that he in whom the Fee reposes pays the King's Silver, and not the other Conusee, who hath but for Life, and the King's Silver is entered and indorsed on the Writ of Covenant, and ought to express, 1. The Sum given for the Licence to agree; 2. The Party who pays it, that is, he in whom the Fee reposes; 3. The Plea between whom etc.; 4. The Land for which the Fine is paid. If the Land is under Five Marks, so as no Primer Fine is due, yet shall there be a Fine *pour conge d'accorder*, and that is always 6s. 8d.

<sup>1</sup> Co. 39. d.  
<sup>2</sup> Inst. 512.

<sup>1</sup> 2 Inst. 512

III. \* The Concord which is the Agreement of the Parties who levy the Fine, wherein is declared how, and in what Manner the Things contained in the Writ shall pass, and begins thus: *Et est concordia talis, Sci. quod præd. Tbo. et Elean. recognoverunt Manerium, etc. esse jus, &c.* And it is to be observed that this is the Substance and Foundation of the Fine, \* for if thereon the King's Silver is entered, although the Conusor dies afterwards, the Fine is good, and the Land will pass, but if the King's Silver is not entered, the Fine may be reversed for Error.

<sup>1</sup> Co. 39. d.  
<sup>2</sup> Inst. 512

<sup>1</sup> Dyer 230. 61  
<sup>2</sup> Mod. 140v

\* If a Fine be acknowledged before Commissioners in the Country in the long Vacation, and before the next Term the Conusor dies; though no Writ of Covenant was sued, nor King's Silver entered, yet the Common Pleas will per-

<sup>1</sup> 2 Ld. Ray.  
<sup>2</sup> 850.

\* An Office so called belonging to the Court of Chancery.

mit the Conufee to enter the Fine as of the Trinity Term preceding.

<sup>1</sup> 5 Co. 39. a.

IV. <sup>k</sup> The Note of the Fine, and that is but an Abstract out of the Original, and Concord made by the † Chirographer before it is ingrossed, and begins in this Manner: *scil. Inter Robert Drury et Tho. Cannock Querent, et Tho. T. et Elea. Uxor ejus Deforecan' de Maner', &c. unde placit' conventionis summonit' fuit inter eos; scil. quod præd' Tho. T. et Eleanora recognover' Maner' &c. esse jus, &c.*

In the old Books the Note of the Fine is taken for the Concord.

It must be inrolled of Record in the proper Office by Direction of the Stat. 5 H. 4. c. 14.

<sup>1</sup> 5 Co. 39. a.

V. <sup>l</sup> The Foot of the Fine; and that begins thus, that is to say, *Hæc est finalis concordia facta in curia Domini Regis apud West. a die Paschæ in quindecim dies Anno, &c. Coram Jacobo Dyer, &c.* So that the Foot of the Fine includes the whole, and contains the Names of the Parties, the Thing granted, the Year, Day, Place, and before what Justices the Concord was made. <sup>m</sup> Of this there are Chirographs or Indentures made, which is called ingrossing the Fine; for the Fine is said to be ingrossed, when the Chirographer makes the Indentures, and delivers them to the Party to whom Conufans is made: And thus the Fine is completely levied at Common Law.

<sup>n</sup> F. N. B. 147.  
<sup>o</sup> Inst. 468.

<sup>p</sup> 1 Co. Read.  
<sup>q</sup> 3.  
<sup>r</sup> 5 Co. 39. b.

<sup>n</sup> A Fine before it is ingrossed is a perfect Record, and by the Common Law where a Fine was levied of a Seignory,

† The Chirographer is an Officer in the Common Pleas, who ingrosses Fines acknowledged in that Court into a perpetual Record, after they are examined and passed in the other Offices.

Rent,



Rent, or Reversion, the Conusee must have sued his *Per quæ servita, quem redditum reddit, or quid juris clamat*, in order to have compelled the Tenant to attorn before the Fine was ingrossed, but now this is unnecessary, such Grants by <sup>4 Annæ, c. 36.</sup> <sub>l. 9.</sub> Fine being made good and effectual without Attornment:

After a Fine is ingrossed, it is sent into the Treasury, and <sup>Co. Read. 12.</sup> the Method of removing it from thence in order for the Conusee to have Execution by *sci. fac.* is by *Certiorari* out of Chancery to the Treasurer, and Chancellor of the Exchequer, and from thence by *Mittimus* into the Common Pleas.

° There may be many Years between the levying and in- <sup>o Plow. 366.</sup> grossing a Fine.



SECT.



## S E C T. IV.

In what Courts, and upon what Writs, Fines may be levied.

28 E. 1.

2 Inst. 515.

3 Co. Read.  
9.

c 1 Salk 340.  
Munt. v.  
Bourne.

**B**Y the Statute *de modo levandi Fines*, it is provided that Fines shall be levied in the Common Pleas, and not elsewhere. Whereupon Sir Edward Coke says, that a Fine cannot be levied to have the Force of a final Concord, by any who have Power *tenere placita*, but only before the Justices of the Common Pleas; and that therefore the King cannot grant Power to hold Plea for the levying of Fines against this Negative Statute, and he is also of Opinion for the same Reason that Fines cannot be levied in Courts of Ancient Demesne, as also because those are not Courts of Record, but that perhaps in some Cities, and Towns Corporate, where they have used to levy Fines, if all their Usages and Customs have been confirmed by Act of Parliament, they may be there levied, but that such Fines will bar no Estate Tail, nor any Strangers, who have present, or future Rights. It has however since been resolved that Tenant in Tail of Ancient demesne Lands may levy a Fine of those Lands in the Court of Ancient Demesne, although it be no Court of Record, because it is but agreeable to the Power of that Court in like Instances; for they may proceed to try the *Mise* joined in a Writ of Right close, which is of an higher Nature than a Fine. And that the Stat. 18 E. 1. is but declarative of the Common Law, and was made to rectify a Mistake, viz. that Fines were leviable in inferior Courts upon Bills or Plaints, which now cannot be, either by Grant or Custom, by reason of the negative Words of this

this Statute; but this does not extend to Ancient demesne Courts; for then this Statute would make Fines of those Lands leviable in the Court of Common Pleas; whereas they are not but reverfable by Writ of *Disceit*, if levied there. It was also<sup>d</sup> resolved in the same Case that a Fine levied in the Court of Ancient Demesne may work a Discontinuance, though that Court is not a Court of Record; for the Discontinuance is because the Freehold is recovered in the Action. But though such a Fine be a Discontinuance, it is not a Bar to the Intail, because not within the Stat. 4 H. 7. c. 24.; for no Fine but a Fine with Proclamations is within that Statute, nor can bar an Estate Tail.

<sup>d</sup> 1 Salk. 340.  
<sup>1</sup> Lutw. 770.

<sup>e</sup> Upon every Writ by which Land is demanded, or by which Land is to be charged, or bound, or which doth in any sort concern Land, a Fine may be levied. Or regularly a Fine may be levied of any Thing whereof a *Præcipe quod reddat* doth lie, as of Land, Rent, etc. or whereof a *Præcipe quod faciat*,<sup>e</sup> as the Writ of Customs, and Services, or whereof a *Præcipe quod permittat*, as to have a Common, Way, etc. or whereof a *Præcipe quod teneat* doth lie as the Writ of Covenant to levy a Fine, and the like. And<sup>h</sup> a Fine may be levied of all Things which are inheritable, and in *esse* at the Time of the Fine levied, whether the Thing be ecclesiastical, and made temporal, or temporal; as of an Honor, Manor, Island, Barony, Castle, Messuage, Cottage, Mill, Toft, Curtilage, Dove-house, Garden, Orchard, Land, Meadow, Pasture, Wood, Underwood, Chapel, River, Chauntry, Corody, Office, Fishing, Warren, Fair, Rectory, Mines, a View of Frankpledge, Waif, Estray, Felons, Goods, Deodand, Hospital, Furzes, Heath, Moor, Rent, Common, Advowson, Hundred, Way, Ferry, Franchise, Seignory, Reversion, Toll, Tallage.

<sup>e</sup> Co. 39. 2.  
Co. Read. 10.  
Shep. Touch.  
<sup>5</sup> 2 Inst. 513.

<sup>g</sup> Dyer 179. b.

<sup>h</sup> Shep. Touch.  
10.

Tallage, Piekage, Pontage, Services, Portion of Tithes, Oblations, or the like.

<sup>a</sup> Shep. Touch.  
22.

<sup>b</sup> Parsonages, Rectories, Advowsons, Vicarages, and Tithes impropriate, pass not by the Names *de Advocatione Ecclesiæ*, but *de Rectoriâ Ecclesiæ de S. cum pertinent'*; but when the Fine is only of a Presentation to a Church, it must be *de Advocatione de Ecclesiæ de S.* and not *cum pertinent'*, and of all Vicarages endowed the Writ must be *de Advocatione Vicariæ Ecclesiæ de S.* and not *cum pertinent'*, and where no Vicarage is endowed, it must pass under these Words, *de Advocatione Ecclesiæ de S.*

A Fine may be levied of a Rent-charge, which had no being before, or of a Chief Rent which had a being before, but not of an Annuity, because that is merely personal.

<sup>i</sup> 1 Salk 340.

A Fine may be levied in any Real Action, but not upon an Original in a personal Action, and <sup>i</sup> the common Writ of Covenant upon which a Fine is levied is not a personal, but a Real Action.

<sup>k</sup> Co. Read.  
20.

<sup>k</sup> In ancient Time a Fine might have been levied of an Advowson in a *Quare impedit*, but such a Fine is not now to be received, because it is only a personal Action, tho' it was usual to levy Fines in such personal Actions in the Reign of *Henry the Third*: And those ancient Fines which have been levied of other Things than will now be allowed, shall be holden as available as they were at the Time when they were levied.

<sup>a</sup> Inst. 313.

<sup>i</sup> 1 Wms. 130.

<sup>i</sup> A Fine cannot be levied of Money agreed to be laid out in the Purchase of Lands to be settled in Tail, but a Decree can bind such Money equally as a Fine alone could bind the Land, if it had been bought, and settled.

A Fine



A Fine may be, and is usually, levied of Shares, in the <sup>2 Wms. 128.</sup>  
New River Water, by the Description of so much Land  
covered with Water.

Land is to be demanded by the certain Quantity of the <sup>Shep. Touch.</sup>  
superficial Measure thereof, *Hida*, *Carucata*, *Bovata*, *Vir-*  
*gata*, *Acra*, *Roda Terræ*, and in like Manner, *Boscus*,  
*Subboscus*, *Brüera*, *Mora*, *Juncaria*, *Mariscus*, *Alnetum*, <sup>v. West. Symb.</sup>  
*et Buscaria*, may be demanded by the Number of Acres <sup>f. 26.</sup>  
thereof.

By the 34 and 35 *H. 8. c. 26.* Fines may be levied in  
Wales.

By the 37 *H. 8. c. 19.* in the County Palatine of *Lan-*  
*caster.*

By the 2 and 3 *E. 6.* in the County Palatine of *Chester.*

By the 43 *El. c. 15.* in the City of *Chester.*

And by the 7 *El. c. 27.* in the County Palatine of *Dur-*  
*ham.*

But such Fines are only to be levied of Lands lying re-  
spectively within those Counties.

<sup>b</sup> If a Fine is levied in the King's Bench, it is not void, <sup>§ 8 Co. Read.</sup>  
but voidable by Writ of Error.

## S E C T. V.

Of taking Conusans by Writ of *Dedimus Potestatem*.

**T**HE Writ of *Dedimus Potestatem*, which is a special Commission granted out of Chancery, was introduced by the Statute of *Carlisle*, whereby it is provided, **That if any Person be so aged, decrepid, or impotent, or by casualty be so oppressed, that by no Means he is able to come before the Justices in Court, in such Case Two or One of the Justices, by Assent of the Residue of the Bench, shall visit the Party so diseased, and receive his Conusans upon the Plea, that he hath in Court, whereupon the same Fine ought to be levied, and if there go but One, he shall take with him an Abbot, a Prior, or Knight of good Fame, and Credence.** \* And the Writ was at first not granted, but where the Party was unable to appear in Court, and accordingly was framed in this Manner, *Ac præfatus A. adeo impotens existat, quod absque maximo corporis sui periculo usque ad Westm. ad diem in brevi prædict' content' ad recognitionem quod in hac parte faciend' laborare non sufficit.* And this Form continueth to this Day, tho' Conusans is taken of them that be in good Health, and able to travel. And altho' the Statute only gives Authority to Two of the Justices of the Common Pleas, or One taking with him an Abbot, *etc.* yet Custom hath so far prevailed, against the express Words of it, that <sup>b</sup> One Judge may take Conusans singly or it is now sufficient, altho' none of the Commissioners be even a Knight, if One of the Judges of the Common Pleas gives his Allocatur to the Caption, by which great Abuses have happened in taking Fines.

b 2. 2.

b 2. Inst. 512.

b Co. Read. 9.

b Bas. Abr. 327.



The Chief Justice of the Common Pleas may now take Conusans out of Court, *virtute officii*, without any *Dedimus Potesstatem*, and so cannot the Chief Justice of England, nor any other of the Justices; and this is by Custom and Usage; for such special Authority is not given him by any Statute; but it seems as if formerly neither the Chief Justice of the Common Pleas, nor any other Justice of that or any other Court, could take the Conusans of Fines of the Court of Common Pleas without a *Dedimus Potesstatem*; for Fitzherbert in his *Natura Brevium*, 344, gives the Form of a *Dedimus Potesstatem*, directed out of Chancery, to the Chief Justice of the Common Pleas.

<sup>d</sup> 9 Co. Read.  
<sup>10.</sup>  
<sup>2</sup> Inst. 512.

\* The Writ of Covenant ought to be sued out before the *Dedimus Potesstatem* is returned into the Common Pleas, and the *Dedimus Potesstatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Justices; but yet Conusans is commonly taken before any Writ of Covenant sued out, and the Writ afterwards purchased with an Antedate.

<sup>e</sup> F. N. B. 344.

<sup>f</sup> 9 Co. Read.  
<sup>10.</sup>

If the Conusee of a Fine is a Commissioner, and takes the Conusans, such Fine is utterly void, *quia judex in propria causa*.

\* If a Man has divers Writs of Covenant depending against several Persons in several Counties, he may have One Writ of *Dedimus Potesstatem* directed to One Justice, to take their Conusances severally, and to certify them, etc.

<sup>g</sup> F. N. B. 344.

<sup>h</sup> Though now most Fines are in fact taken by *Dedimus Potesstatem*, yet they are recorded as taken in Court, and this is done to prevent Questions about Captions.

<sup>h</sup> 10 Mod. 45.

<sup>i</sup> If a *Dedimus* is awarded to Two, and One only takes the Conusans of the Fine, this may be assigned for Error, be-

<sup>i</sup> Cro. El. 240.  
Yetvesson, 34.

cause where One of the Commissioners certifies the Conusans, the Assignment does not contradict the Record. But in this Case if the Fine had afterwards been drawn up as a Fine acknowledged in Court, there the erroneous Conusans taken upon the *Dedimus* shall not be assigned for Error, because it shall be taken as a Fine acknowledged in Court only; and no Averment of the Party shall be admitted to disprove the Record.

\* F.N.B. 345.

\* If the Commissioners will not certify the Conusans into the Common Pleas, then the Party may sue a *Certiorari* against them, reciting all the Matter, and how they have taken the Conusans, and commanding them to certify the same, and upon that an *Alias* and *Pluries*, and an Attachment, shall issue against them, if they will not certify it, or shew Cause why they do not.

If the Commissioners die before the Conusans is certified, their Executors must certify it upon a *Certiorari* to them directed; or, upon their Refusal, the like Process lies against them.

1 Shep. Touch.

9.

1 The Commissioners ought to certify the Conusans and return the Commission under their Hands and Seals, within a Year after the the Conusans is taken at farthest.

2 Yelv. 33.

2 If the Conusans of a Fine is taken by One of the Justices of the Common Pleas without any Commission, and afterwards a Writ of *Dedimus Potestatem* is sued out with an Antedate, so as to over-reach the taking the Conusans, and then returned, and the Fine is made perfect, and received by the Justices of the Common Pleas, this will be good.

## S E C T. VI.

## STATUTES relating to Fines.

18 Ed. I. Stat. 4. *De moda levandi Fines.*

A. D. 1190.

The Manner of levying Fines.—What Things be requisite to make them good; and who are bound by them.

WHEN the Writ Original is read in the Prefence of the Parties before the Justices, a Serjeant shall say, Sir Justice, Leave to agree; and the Justice shall say to him, What will Sir R. give? and shall name One of the Parties. Then, when they are agreed of the Sum of Moneey to be given to the King, the Justice shall say, Cry the Peace; and after the Serjeant shall say, “ Infomuch as  
 “ Peace is licensed thus unto you *W. S.* and *A.* his Wife,  
 “ that here be, do acknowledge the Manor of *B.* with the  
 “ Appurtenances contained in the Writ, to be the Right of  
 “ *R.* as that which he hath of their Gift, to have, and to  
 “ hold to him, and his Heirs of the said *W.* and *A.* and  
 “ the Heirs of *A.* as in Demesnes, Rents, Seignories, Courts,  
 “ Pleas, Purchases, Wards, Marriages, Reliefs, Escheats,  
 “ Mills, Advowsons of Churches, and all other Franchises,  
 “ and free Customs to the said Manor belonging, rendering  
 “ yearly to *N.* and his Heirs Chief Lords of the Fee, the  
 “ Services and Customs due for all Services.” And it is to be noted, That the Order of the Law will not suffer a final Accord to be levied in the King’s Court, without a Writ Original, and at least before Four Justices, in the Bench,  
 or



or in Eyre, and not elsewhere, and in the Presence of the Parties named in the Writ, who must be of full Age, good Memory, and out of Prison; and if a married Woman be One of the Parties, then she must be first examined by Four of the said Justices, and if she doth not assent thereunto, the Fine shall not belevied. And the Cause wherefore such Solemnity ought to be done in a Fine is, because a Fine is so high a Bar, and of so great a Force, and of so strong a Nature in itself, that it concludeth not only such as be Parties, and Privies thereto, and their Heirs, but all other People of the World, being of full Age, out of Prison, of good Memory, and within the Four Seas, the Day of the Fine levied, if they make not their Claim of their Action within a Year and a Day by the Country.

<sup>a</sup> 2 Inst. 513. <sup>a</sup> This Statute is only a Declaration of the Common Law, and contains a Form of the most principal Fine, viz. The Fine *sur conusans de droit come ceo*, &c.

*Acknowledge the Manor of B. etc.* The Agreement of the Parties has altered the Form of the Conusans here expressed, and has added, *et illud remisit et quietum clamavit*, &c. and the Fine *sur conusans de droit come ceo*, &c. doth now comprehend a Clause of Warranty, which is here omitted.

At the Time of making this Act the Form was to enumerate in general whereof a Manor consisted; but that Form is now altered, and that Clause wholly omitted at this Day.

<sup>a</sup> 2 Inst. 515. <sup>b</sup> *In the Presence of the Parties*, &c. So that after this Act, it was requisite for the Parties to appear personally in Court, till the Statute of Carlisle was made.

Ante 18.

Named



*Named in the Writ.* The Vouchee and Tenant, by Receipt are not named in the Writ, and yet they may levy a Fine to the Demandant, or the Demandant to them, and these Words, being in the Affirmative, do not restrain them. c 2 Inst. 513.

*But all other Persons, &c.* In these Words are included as well Tenants for Years, by Statute, Merchant, and Staple, and Copyholders, as Tenants of Freehold and Inheritance, if they are out of Possession at the Time of the Fine levied; but this Act was no Bar to the Issue in Tail, the Statute *de Donis* still continuing in force. d 2 Inst. 517. 13 E. c. 12.

*Of full Age.* A Twofold Provision is made for Strangers. c 2 Inst. 516.  
1. That they be of full Age, out of Prison, of good Memory, and within the Four Seas :

2. That they put in their Claim within a Year and a Day.

By this Act Strangers being Infants, and others who were not bound to make Claim, and their Heirs, were exempted from making Claim at any Time, for the Infant was not bound to make Claim within a Year and Day after he came of full Age, nor he of unsound Memory within a Year and a Day after his Memory was restored, nor he in Prison or beyond Sea within a Year and Day after he became at large, or within the Realm, but they were at large forever by the Common Law, and bound to no Time. But hereby a Feme-covert was bound, if Claim was not made within the Year and Day, and the Reason was because she had an Husband who was able to make Claim : But if the Husband was within Age at the Time of the Fine levied, tho' the Wife was of full Age, f Plow. 360. Pr. Saunders. 2 Inst. 516.  
the

the Infancy of the Husband, (who was to make the Claim, the Wife being *sub potestate viri*) should privilege the Estate of the Wife forever. So as by the Justice of the ancient Common Law, whereof this Act is a Declaration, Two Kind of Strangers to the Fine were exempted and provided for. 1. Such as by Presumption of Law had not sufficient Understanding, as the Infant, or *non Compos Mentis*; or had no Notice, as the Man in Prison, or beyond Sea. 2. Such as had ancient Rights, who are ever favoured in Law, if they made their Claim within the Year and Day.

2 Inst. 517,  
518,  
Plow. 358,  
359.

§ For the Preservation of ancient Rights at the Common Law, there was four Manner of Claims, whereof Two were by Matter of Record, and Two by Act in the Country. 1. By Matter of Record as by a Real Action, according to the truth of the Case brought by him who had Right within the Year and Day, or in ancient Time by an Entry of a Claim on the Record of the Foot of the Fine: But first it must have been made in open Court; 2. By Act in the Country, as by an actual Entry on the Lands, or by continual Claim, which amounted to an Entry. But all these were to be done by him who had a present Right of Action or Entry, and therefore he who had a Remainder or a Reversion expectant upon any Estate of Freehold, could make no Claim, having neither present Right of Action or Entry, and therefore in that Case the particular Tenant must have made Claim, and his Claim should not only have preserved his own Right, but also the Right of those in Reversion or Remainder: But if no Claim was made by the immediate Tenant of the Freehold, then they in Reversion or Remainder expectant upon his Estate were barred for ever.

27 *Edw. I. c. I. Statutum de Finibus levatis.* A. D. 1295.

No Exception to a Fine that the Demandant was  
seised.—Fines shall be openly read.

**F**ORASMUCH as Fines levied in our Court ought and do make an End of all Matters, and therefore are called Fines principally, where after waging of Battail or the Great Assize in their Cases ever they hold the last and final Place. And now by a certain Time passed, as well in the Time of King *Henry* of famous Memory our Grandfather as in our Time, the Parties of such Fines and their Heirs, contrary to the Laws of our Realm of ancient Time used, were admitted to annul and defeat such Fines, alledging, that before the Fine levied, and at the levying thereof, and since the Demandants, or Plaintiffs, or their Ancestors, were always seised of the Lands contained in the Fine, or of some Parcel thereof: And so Fines lawfully levied were many Times unjustly defeated and annulled by Jurors of the Country falsely and maliciously procured. We, therefore, intending to provide a Remedy in the Premises in our Parliament at *Westminster*, have ordained that such Exceptions, Answers, or Inquisitions of the Country, shall from henceforth in nowise be admitted contrary to such Recognizances, or Fines. And further we will, that this Statute shall as well extend unto Fines heretofore levied, as to them that shall be levied hereafter. And let the Justices see, that such Notes and Fines as hereafter shall be levied in our Court, be read openly and solemnly, and that in the mean Time all Pleas shall cease; and this must be at Two certain Days in the Week, according to the Discretion of the Justices.

D

The



The Mischief which this Statute was intended to remedy

<sup>a</sup> 1 Inst. 522.

<sup>a</sup> Sir *Edward Coke* tells us had crept in by the Maintenance of the Grandees during the Infurrections and Civil Wars in the Reign of *Henry* the Third, and continued till the Time of making this Act. There were Two Cases upon which it

<sup>b</sup> 2 Co. Read. 18.

arose. <sup>b</sup> 1. Where a Man seised of Lands in Fee had levied a Fine to a Stranger *sur conusans de droit come ceo*, &c. and the Conussee had granted and rendered back the same Land to the Conusor in Tail, for Life, or Years, then the Heirs of the Conusor, who were prejudiced by such Fines, were by Sufferance of the Justices against Law, under Colour that there was no Transmutation of Possession permitted to avoid them. *Alledging that before the Fine levied*, &c. 2. Where Tenant in Fee accepted a Fine from him, who had nothing in the Land for Life, or in Tail, where by the Law the Conussee, and his Heirs were estopped, and concluded for ever from claiming any other Estate. Yet before the making this Statute, the same Averment was also received in Avoidance of such a Fine. And for this Reason, and in Affirmance and Restitution of the ancient Common Law, this Provision

<sup>c</sup> 20 Co. Read. 16.

<sup>3</sup> Co. 89. b. Plow. 436.

& 487.

<sup>2</sup> Inst. 517.

Per *Coke*.

<sup>22</sup> E. 4. 15.

was made. <sup>c</sup> But a Distinction has been taken with regard to Tenant in Tail, where he levies a Fine *sur conusans de droit come ceo*, &c. and when he accepts such a Fine, and makes a Grant and Render: For against a Fine levied by Tenant in Tail *sur conusans de droit come ceo*, &c. the Heir cannot aver continuance of Possession in his Ancestor, for that would be contrary to the Fine, and is restrained by this Act: But where Tenant in Tail accepts a Fine *sur conusans de droit come-ceo*, &c. and Grant and Renders the Land by the same Fine (which is but executory) there, if no Execution be sued in the Life of the Tenant in Tail, his Issue may aver continuance of Possession, &c. in his Father, for that standeth well with the Fine, for the Acceptance of the Fine *sur conusans de droit*, &c. which supposeth a Gift precedent, doth not alter the Estate, and the Grant and Render, until



it is executed, doth not devert any Estate out of the Tenant Ante 3.  
in Tail, and by consequence he continues Tenant in Tail.

<sup>d</sup> In the same Manner against a Fine *sur conusans de droit* d 20 Co. Read. 16.  
*tantum* or *sur Release* levied to Tenant in Tail, or by him Per Choke, 12 E. 4. 15.  
to a Stranger, if no Execution was had in his Lifetime, the  
Issue might have averred Continuance of Possession in their  
Ancestor after this Statute. And although the Issue in Tail  
being Privy and Heir to him who levied the Fine *sur conu-*  
*sans de droit come ceo*, was estopped from annihilating the  
Fine by such Averment, yet it was no Bar to the Estate  
Tail, which was still protected by the Statute *de Donis*.

For the Manner of pleading in Avoidance of Fines. *Quod*  
*Partes Finis nihil habuerunt*, &c. *Vide. 2 Inst. 523. Dyer*  
290, 291.

34 Edw. 3. 16. *Statute of Nonclaim.*

A. D. 1360.

*Nonclaim* of Fines shall hereafter be no Bar.

**I**TEM, it is accorded, That the Plea of Nonclaim of  
Fines, which from henceforth be to be levied, shall  
not be taken nor holden for any Bar in Time to come.

<sup>e</sup> At the Common Law, as appears by the Statute *do modo* e Co. Lit. 362. Ante 21.  
*levandi Fines*, those who had Right, (unless within Age, in  
Prison, *non compos mentis* or beyond the Seas) were bound  
to make Claim within a Year and a Day after the Fine le-  
vied, or else were barred for ever, And it has been said, f Plow. 359, 360.  
that One of the Causes for making this Act was to preserve  
the Rights of those in Reversion and Remainder upon Estates  
of Freehold, and to remedy the Hardship they were under  
in being liable to be barred by the Laches of the particular  
Tenants, when at the same Time they could make no Claim  
D 2 themselves.

themselves. But by this Act the Necessity of making Claim by any Person, or within any Time, is intirely taken away, and all Persons are left at large to pursue their Rights, when they will. And this is now still the Law with regard to Fines not levied with Proclamations according to the Statutes herein-after mentioned, but such a Fine without Proclamations, though no Bar to the Issue in Tail, yet when levied by Tenant in Tail in Possession, works a Discontinuance, and puts the Issue in Tail, Donor, or Remainder Man to their Formedon, which by the 21 Jac. 1. c. 16. must be brought within Twenty Years.

A. D. 1403,

5 H. 4. c. 14.

For Inrolling of Writs in the Common Pleas,  
whereupon Fines be levied.

**I**TEM, Whereas many Feet of Fines of Lands and Tenements within the Realm of *England* remaining in the King's Treasury, and the Notes of such Fines remaining in the Common Bench have been before this Fine imbeziled, and other Feet and Notes of Fines falsely counterfeited, and set in their Places, whereby many People of the Realm have been greatly endamaged before this Time, and may be disherited in Time to come; " It is ordained and established, " that all the Writs of Covenant, and all other Writs " whereupon Fines shall be levied in Time to come, with " the Writs of *Dedimus Potestatem*, if any be, and with all " Knowledges, and Notes of Fines, before that they be " drawn out of the Common Bench by the Chirographer, " shall be inrolled in a Roll, to be of Record for ever, to " remain in the safe Custody of the Chief Clerk of the Common Bench, and of his Successors for ever, for the old " Fee of Twenty-two Pence, accustomed to be paid to the " Chief

" Chief Clerk for the entering of the Concord of every  
 " Fine, without paying any more; to the Intent, that if  
 " the Notes in the Custody of the Chirographer, or the  
 " Fines, be imbeziled, a Man may have Recourse to the  
 " said Roll to have Execution thereof, as he should have,  
 " if the Fines were not imbeziled: And that all the Writs  
 " of Covenant, and all other Writs whereupon Fines have  
 " been levied in Times past, shall be also be of Record.  
 " And moreover, all the Fines that were now late im-  
 " beziled in the Treasury of our Lord the King by Persons  
 " unknown, if the Notes, and the same Writs of Covenant  
 " of such Fines imbeziled remaining in the Custody of  
 " the Chirographer may be found, that then to the Party  
 " shewing Part of the Fines imbeziled, such Notes, and  
 " Writs of Covenant shall remain of Record, as far forth,  
 " as the same Fines should have been, if no imbeziling  
 " thereof had been made."

<sup>1</sup> At the Common Law, immediately after the Fine in- 15 Co. 39. b.  
 groffed, it was sent into the Treasury. And before this  
 Statute, the Chief Clerk had not any Record of the Fine  
 but the Chirographer, and nothing remains with the Chief  
 Justice of the Common Pleas, but the Licence to accord.

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1 R. 3. c. 7.

A. D. 1483.

Who shall be bound by a Fine levied before the  
 Justices of the Common Pleas: And Procla-  
 mations made thereof.

Sect. I. **A**FTER reciting the Statute *de finibus*, Ordains Ante 25.  
 that Fines, after they are ingrossed shall be  
 read; and proclaimed in the Common Pleas the same Term,  
 and the Three Terms next ensuing after the same ingrossing  
 in the same Court, at Four Days in each Term; and that a  
Transcript



Transcript of the Fines shall be sent to the Justices of Assize of the County where the Lands lie, who are to cause the said Fines to be read and proclaimed in every Sessions of Assize to be holden the same Year.

Sect. II. A like Transcript shall be sent to the Justices of the Peace, where the Lands, &c. lie, They to cause open and solemn Proclamation of the same Fine to be made at Four General Sessions of the Peace, to be holden in the same Year.

Sect. III. The said Justices of Assize and Peace to certify the same Proclamations to the King's Justices of the Common Pleas at the Second Day of Return of the Term then next following: After which Proclamations had, made, and certified, the said Fine to be a final End, and to conclude as well Privies as Strangers to the same, EXCEPT Women covert other than be Parties to the said Fine, and every Person or Persons then being within Age, in Prison, or out of this Realm of *England*, or not of whole Memory at the Time of such Fine levied.

Sect. IV. Also saving to every Person or Persons such Right, Title, &c. almost *verbatim* with Sect. 4. of the 4 H. 7. c. 24. adding the Word *certified*, after the Words *Proclamations made*.

Sect. V, VI. and VII. Are almost *verbatim* the same as those in the 4 H. 7. as is the 8th of this Act with the 9th of that; and therefore I omit them to avoid Repetition.



How often a Fine levied in the Common Pleas shall be read, and proclaimed; and who then shall be bound thereby. A. D. 1489.

**T**HIS Act, after reciting the last Clause in the Statute *de Finibus*, goes on thus: "The King our Sovereign Lord considereth that Fines ought to be of the greatest Strength to avoid Strifes, and Debates, and to be a final End and Conclusion; and of such Effect were taken afore a Statute made of Nonclaim, and now is used the Contrary to the universal Trouble to the King's Subjects, will therefore it be ordained by the Advice of the Lords Spiritual and Temporal, *etc.* That after the ingrossing of every Fine to be levied after the Feast of *Easter* that shall be in the Year of our Lord, 1490, in the King's Court afore His Justices of the Common Pleas of any Lands, Tenements, or any other Hereditaments, the same Fine be openly and solemnly read and proclaimed in the same Court, the same Term, and in Three Terms then next following the same, ingrossing, in the same Court, at Four several Days in every Term, and in the same Time that it is so read, all Pleas to cease. 27 E. 1.  
Ante 25.  
34 E. 3. c. 16.  
Ante 27.  
Sect. 1.  
Now reduced  
to Once in  
each Term by  
31 Eliz. c. 1.

Sect. II. "And the said Proclamations so had and made, the Fine to be a final End, and conclude as well Privies, as Strangers to the same, EXCEPT Women covert other than be Parties to the said Fine, and every Person then being within Age of 21 Years, in Prison or out of this Realm, or not of whole Mind at the Time of the said Fine levied, not Parties to such Fine. Exception.

Sect.

and Saving.

Sect. III. " And Saying to every Person or Persons, and  
 " to their Heirs, other than the Parties in the said Fine,  
 " such Right, Claim, and Interest, as they have to or in  
 " the said Lands, Tenements, or other Hereditaments, at  
 " the Time of such Fine ingrossed, so that they pursue  
 " their Title, Claim, or Interest, by way of Action, or  
 " lawful Entry, within Five Years next after the same Pro-  
 " clamations had and made.

and Saving.

Sect. IV. " And also Saving to all Persons such Action,  
 " Right, Title, Claim, and Interest, in or to the said Lands,  
 " Tenements, or other Hereditaments, as shall *first grow*,  
 " *remain*, or *descend*, or *come to* them after the said Fine,  
 " ingrossed, and Proclamations made, by Force of any  
 " Gift in Tail, or by any other Cause, or Matter, had and  
 " made before the said Fine levied, so that they take their  
 " Action, or pursue their said Right and Title according  
 " to Law, within Five Years next after such Action,  
 " Right, Claim, Title, or Interest, to them accrued, de-  
 " scended, fallen, or come. And that the said Persons and  
 " their Heirs may have their said Action against the Pernor  
 " of the Profits of the said Lands and Tenements, and  
 " other Hereditaments, at the Time of the said Action to  
 " be taken.

Sect. V. " And if the same Persons at the Time of such  
 " Action, Right, and Title accrued, descended, remained,  
 " or come unto them, be *Covert de Baron*, or within Age,  
 " in Prison, or out of this Land, or not of whole Mind;  
 " then it is ordained, *etc.* That their Action, Right, and  
 " Title, be reserved and saved to them, and their Heirs,  
 " until the Time they come, and be at their full Age of  
 " Twenty-one

“ 21 Years, out of Prison, within this Land, Uncovert,  
 “ and of whole Mind, so that they, or their Heirs, take their  
 “ said Actions, or their lawful Entry, according to their  
 “ Right, and Title, within Five Years next after that they  
 “ come, and be at their full Age, out of Prison, within this  
 “ Land, Uncovert, and of whole Mind, and the same Ac-  
 “ tions pursue, or other lawful Entry take according to  
 “ Law.

Sect. VI. “ And also it is Ordained *etc.* That all such  
 “ Persons as be *Covert de Baron*, not Party to the Fine,  
 “ and every Person being within Age of 21 Years, in Pri-  
 “ son, or out of this Land, or not of whole Mind at the  
 “ Times of the said Fines levied, and ingrossed, and by  
 “ this Act before excepted, having any Right, or Title, or  
 “ Cause of Action to any of the said Lands, and other He-  
 “ reditaments, that they, or *their Heirs* inheritable to the  
 “ same take their said Actions, or lawful Entry, according  
 “ to their Right, and Title, within Five Years next after  
 “ that they come, and be of Age of 21 Years, out of Pri-  
 “ son, Uncovert, within this Land, and of whole Mind,  
 “ and the same Actions sue, or their lawful Entry take,  
 “ and pursue according to the Law; and if they do not  
 “ take their Actions, and Entry as is aforesaid, then they  
 “ and every of them, and their Heirs, and the Heirs of  
 “ every of them, be concluded by the said Fines for-  
 “ ever in like Form, as they that be Parties, or Privies to  
 “ the said Fines.

Sect. VII. “ Saving to every Person or Persons, not Parties,  
 “ or Privy to the said Fine, their Exception to avoid the  
 “ said Fine, by that, that those which were Parties to the  
 “ Fine, nor any of them, nor no Person or Persons, to  
 E “ their



“ their Use; nor to the Use of any of them, had nothing in  
 “ the Lands, and Tenements comprized in the said Fine,  
 “ at the Time of the said Fine levied.

Sect. VIII. “ And it is Ordained *etc.* That every Fine,  
 “ that hereafter shall be levied in any of the King’s Courts  
 “ of any Manors, Lands, Tenements, and other Posses-  
 “ sions after the Manner, Use, and Form, that Fines have  
 “ been levied afore the making of this Act, be of like  
 “ Force, Effect, and Authority, as Fines so levied be, or  
 “ were afore the making of this Act, this Act, or any Act  
 “ in this said Parliament made, or to be made, notwith-  
 “ standing: And every Person shall be at Liberty to levy  
 “ any Fine hereafter at his Pleasure, whether he will after  
 “ the Form contained, and ordained in, and by this Act,  
 “ or after the Manner, and Form aforetime used.”

This Statute, though it makes no mention of the 1 R. 3.  
 c. 7. yet was framed with the same Views, agrees with it  
 in Substance, and in many Parts follows the very Words of  
 it. The material Differences between the Two Acts are  
 these following; the 1 R. 3. directs a Transcript of the  
 Fine to be sent to the Justices of Assize, and Peace, which is  
 here omitted, and <sup>m</sup> therefore now not necessary; and the  
 Seventh Section of this Act is not to be found in the 1 R. 3.  
 also <sup>n</sup> the Word *First*, in the 4th Section of this Act, is not  
 there inserted.

<sup>m</sup>Shep. Touch.  
6.

<sup>n</sup>Plow. 372.

<sup>o</sup>Plowd. 372,  
373. 374.

<sup>o</sup>The Words *Grow, Remain, Descend, or Come to* in  
 Sect. 4. are particularly commented on, and explained by  
 Lord Dyer, in his Argument in *Stowel’s Case*.

These Two Acts make Two material Alterations in the  
 Common Law, as it stood before the Statute of Nonclaim,  
 for



for Claim must now be made by Action or Entry, and therefore <sup>p 2 Inst. 518.</sup> a Claim entered upon the Foot of the Fine is not at this Day available, also they who have a Right of a Reversion, or Remainder expectant on an Estate for Life, or in Tail, shall have Five Years after their Title come to them.

Though every Person is at Liberty to levy a Fine either as he might have done before by the Common Law, or with Proclamations according to this Act, <sup>q 3 Co. 87. b.</sup> yet every Fine shall be intended to be a Fine levied with Proclamations, for it is most beneficial to the Conusee: And if there is Error in the Proclamations, as if any of them appear by the Record to have been made on <sup>r Plow. 265.</sup> a Sunday, or on <sup>s Dyer. 182.</sup> a Day impossible, as the 31st of June, or the like, the Proclamations will only be void, and the Fine itself will remain good at Common Law to work a Discontinuance: For the Fine by itself is One Matter of Record, perfect, and full before the Proclamations made, and binds the Parties, and the Right of the Land, between them; and the Proclamations which are grounded upon the Fine, and pursuant to it, yet are several from the Fine, and they, and the Fine are several Matters of Record, for which Reason Error in them is not Error in the Fine, for the Fine being good cannot lose it Force, because the Proclamations are ill, and erroneously made.

The several Estates, which are held to be included in this Act, and who are bound immediately by it after the Proclamations passed, and within what Time those who are comprized in the Exception, and Savings, are to pursue their Rights, as also what Persons have been thought altogether out of the Provisions of the Act, and to be at Liberty to bring

their Actions, or enter when they will, will be explained hereafter in the following Sections.

<sup>1</sup> Over 2. b.  
178. 8. 6.

It was a Question, Whether the general Words of this Statute extended to bar the Issue in Tail upon a Fine levied by his Ancestor, contrary to the express Provision of the Statute *de Donis*, and though by the Opinion of Five Judges against Three, in the 19th Year of the Reign of *Henry* the Eighth, it was held, that the Estate Tail was barred by such a Fine, levied with Proclamations, and Five Years passed, yet it was thought necessary to obviate all Doubts upon this Point, and for that Purpose an Act was made in the

32 H. 8. c. 36.

### For the Exposition of the Statute of Fines.

This Act, after reciting the making and Purport of the 4 H. 7. c. 24. goes on in these Words, “ Sithen which  
“ Time, by Diversity of Interpretations, and expounding  
“ of the same Statute, it hath been, and yet is, by some  
“ Manner of Persons doubted, and called in Question,  
“ Whether Fines with Proclamations, levied or to be  
“ levied before the said Justices, by any Person, or Per-  
“ sons having, or claiming to have, in any Manors,  
“ Lands, Tenements, or Hereditaments, comprised in  
“ the same Fine in Possession, Reversion, Remainder,  
“ or in Use, any Manner of Estate Tail should imme-  
“ diately after the said Fine levied, ingrossed, and Pro-  
“ clamations made, bind the right Heir, and Heirs of  
“ such Tenant in Tail, and every other Person, and Per-  
“ sons seized, or claiming to their Use, or Uses; by Occasion  
“ whereof divers Debates, Controversies, Suits, and Trou-  
“ bles

" bles have been begun, moved, and had within this  
 " Realm, and more like to ensue, if Remedy for the same  
 " be not provided: For the Establishment, and Reforma-  
 " tion whereof, and for the sure, and sincere Interpretation  
 " of the said Statute in avoiking all Dangers, and Conten-  
 " tions, Controversies, Ambiguities, and Doubts, that  
 " hereafter may ensurge, grow, and happen, our Sovereign  
 " Lord the King, with the Assent *etc.* hath Enacted and  
 " Ordained, That all and singular Fines as well heretofore <sup>at S. G.</sup>  
 " levied, as hereafter to be levied, before the said Justices  
 " with Proclamations, according to the said Statute, by any  
 " Person, or Persons of full Age of One-and-twenty Years,  
 " of any Manors, Lands, Tenements, or Hereditaments,  
 " before the Time of the said Fine levied in any wise in-  
 " tailed to the Person, or Persons so levying the same Fine,  
 " or to any the Ancestors of the same Person, or Persons in  
 " Possession, Reversion, Remainder, or in Use, shall be  
 " immediately after the same Fine levied, ingrossed, and  
 " Proclamations made, adjudged, accepted, deemed, and  
 " taken, to all Intents, and Purposes, a sufficient Bar, and  
 " Discharge forever against the said Person, and Persons,  
 " and their Heirs claiming the same Lands, Tenements,  
 " and Hereditaments, or any Parcel thereof, only by Force  
 " of such Intail, and against all other Persons claiming the  
 " same, or any Parcel thereof; only to their Use, or to the  
 " Use of any Manner of Heir of the Bodies of them; any  
 " Ambiguity, Doubt, or Contrariosity of Opinion risen,  
 " or grown upon the said Statute to the Contrary notwith-  
 " standing.

Sect. II. " Provided always, That this Act, nor any  
 " Thing therein contained, shall extend to bar, or exclude  
 " the lawful Entry, Title, or Interest, of any Heir, or  
 " Heirs;



“ Heirs, Person, or Persons heretofore given, or hereafter  
 “ to be given, grown, or accrued to them, or any of them,  
 “ in, or to any Manors, Lands, Tenements, and Heredi-  
 “ taments, by Reason of any Fine, or Fines heretofore le-  
 “ vied, or hereafter to be levied, by any Woman after the  
 “ Death of her Husband, contrary to the Form, Intent,  
 “ and Effect, of the Statute made in the Eleventh Year of  
 “ the Reign of King *Henry* the Seventh, of any Manors,  
 “ Lands, Tenements, and Hereditaments, of the Inhe-  
 “ ritance or Purchase of the said Husband, or of any of his  
 “ Ancestors, given, or assigned to any such Woman in  
 “ Dower, for Term of Life or in Tail, in Use, or in Pos-  
 “ session; but that the same Act, made in the said Eleventh  
 “ Year of the said King *Henry* the Seventh, shall stand,  
 “ remain, and be in full Strength, and Virtue, in every Ar-  
 “ ticle, Sentence, and Clause therein contained, in like  
 “ Manner and Form as though this present Act had never  
 “ been had, ne made.

Sect. III. “ Provided also, That this Act, ne any Thing  
 “ therein contained, do extend to any Fine, or Fines, at any  
 “ Time heretofore levied, or hereafter to be levied, of any  
 “ Lordships, Manors, Lands, Tenements, or Heredita-  
 “ ments, whatsoever they be, the Possessioners and Owners  
 “ whereof, by Reason of any express Words contained in  
 “ any Special Act, or Acts of Parliament, made, or ordained  
 “ since the said Fourth Year of the Reign of the said King  
 “ *Henry* the Seventh, stand, be bounden, or restrained,  
 “ from making any Alienations, Discontinuances, or other  
 “ Alterations, of any of the same Lordships, Manors,  
 “ Lands, Tenements, and Hereditaments, contained in  
 “ the said Fine, or Fines; but that all, and every such Fine,  
 “ and Fines at any Time heretofore levied, or hereafter to



“ be levied, by any such Person, or Persons, or their Heirs,  
 “ of any such Lordships, Manors, Lands, Tenements, or  
 “ other Hereditaments, shall be of such like Force, and  
 “ Strength in Law, and of none other Effect, than the same  
 “ Fine so levied, or to be levied, should have been, if this  
 “ present Act had never been had, nor made; any Thing  
 “ therein contained to the Contrary thereof in any-wise  
 “ notwithstanding.

Sect. IV. “ Provided also, That this Act, nor any Thing  
 “ therein contained shall extend to any Fine, or Fines here-  
 “ tofore levied of any Manors, Lands, Tenements, or  
 “ Hereditaments, now in Suit, Demand or Variance, in  
 “ any of the King's Courts, or whereof any Charters, Evi-  
 “ dences, or Muniments concerning the same be now in  
 “ Demand in the King's high Court of Chancery; nor to  
 “ any Fine, or Fines heretofore levied of any Manors,  
 “ Lands, Tenements, or Hereditaments, which, before the  
 “ First Day of this present Parliament, have been re-  
 “ covered, gotten, or obtained, by Reason of any Judg-  
 “ ment, Entry, Decree, Arbitrament, or other lawful  
 “ Means, contrary to the Purport, Intent, or Effect, of  
 “ any such Fine, or Fines thereof heretofore levied; nor to  
 “ any Fine or Fines heretofore levied, or hereafter to be  
 “ levied, by any Person, or Persons of any Manors, Lands,  
 “ Tenements, or Hereditaments, before the Time of the  
 “ levying of the same Fine given, granted, or assigned, to  
 “ the said Person, or Persons so levying the same Fine, or to  
 “ any of his, or their Ancestors in Tail, or by virtue  
 “ of any Letters Patent of our said Sovereign Lord, or any  
 “ of His Progenitors, or by virtue of any Act, or Acts of  
 “ Parliament, the Reversion whereof at the Time of the  
 “ said

“ said Fine, or Fines so levied, being in our said Sovereign  
 “ Lord, His Heirs or Successors: But that every such Fine,  
 “ and Fines shall be of like Force, Strength, and Effect, as  
 “ they were, or should have been, if this Act had never  
 “ been had, nor made.”

The First Section of this Act is merely an Exposition of  
 the 4 H. 7. c. 24. and the Purview of it is Special; viz.  
 \* 9 Co. 140. b. “ against the Heirs in Tail, and all others claiming to their  
 Use, and leaves those who are Strangers to pursue their  
 Right by Entry, or Action, according to the several Provi-  
 sions made for them by the 4 H. 7. All the Clauses of that  
 Act, together with this First Section, are fully explained  
 in \* the Arguments in *Stowel's Case*, and in \* the Case of  
 Fines.  
 \* Plow.  
 \* 3 Co.

The 34 H. 8. c. 20. has a Proviso generally, That no  
 Act had, done, or suffered, by any Tenant in Tail, the  
 Reversion, or Remainder being in the King, shall bind, or  
 conclude the Heirs in Tail; but this only extends to Estates  
 \* Co. 15. b.  
 16. a.  
 Co Lit. 372. b. Tail created by the King's Gift or Provision: And tho'  
 it appears from the Preamble of that Act, that the Mischief  
 intended to be provided against was in the Case of a Re-  
 covery suffered by a Tenant in Tail, which before that Act  
 was held to be a Bar to the Issue, yet the general Words in  
 the enacting Clause have been construed to extend also to  
 Fines levied by such a Tenant in Tail.

\* Shep. Touch.  
 21. “ He who is a Privy within the Intent of the 4 H. 7.  
 is an Heir within this Act, and *sic et converso*.

1 Mar. Seff. 2. c. 7.

## An Act touching Proclamations upon Fines.

**W**HEREAS upon Fines levied with Proclamations doubts have of late arisen by Reason of Adjournment of Terms, in which Proclamations should have been, according to the Form limited for Proclamations upon Fines by the 4 H. 7. and were not by Reason of such Adjournments had, ne made according to the Purvey of the same Estatute. 4 H. 7. c. 24

Sect. I. " Be it therefore enacted, That all Fines, as  
 " well heretofore levied as hereafter to be levied, before the  
 " Justices of the Common Pleas of any Manors, Lands, Te-  
 " nements, or other Hereditaments, whereupon the Pro-  
 " clamations have not, or shall not, by Reason of Ad-  
 " journment of any Term by Writ, be duly made, shall be  
 " of as good Force, Effect, and Strength to all Intents,  
 " Constructions, and Purposes, as if any Term heretofore  
 " so adjourned, or that at any Time hereafter shall be so  
 " adjourned, had been holden, and kept, from the Beginning  
 " to the End thereof, and not adjourned, and Proclamations  
 " therein made according to the Form and Effect of the  
 " said Statute.

Sect. II. " Provided that this Act shall not extend to  
 " Fines heretofore levied of any Manors, *etc.* now in Suit,  
 " or whereof any Charters, *etc.* concerning the same, be  
 " now in Demand, nor to any Fines heretofore levied of  
 " any Manors, &c. before recovered."

F

This

<sup>a</sup> Plow. 371.<sup>4</sup> H. 7. c. 21.

<sup>a</sup> This Act was made to remedy a Mischief arising from the Words of the 4 H. 7. which ordains *that the Proclamations shall be made the same Term that the Fine is ingrossed, and the Three Terms then next following.* For if One of the said Three Terms had been adjourned, the Proclamations had been ineffectual in the whole, and it could not be supplied the last Term after, by the Exposition of the Words, nor by the Equity of the Statute.

<sup>b</sup> Dyer 186.  
(68.)

<sup>b</sup> It hath been adjudged by all the Justices that this Act extendeth, where but Part of the Term is adjourned, for it is a favourable Law, and to be taken by Equity.

23 El. c. 3.

### An Act for the Reformation of Errors in Fines and Recoveries.

Sect. I. “ **E**VERY Writ of Covenant, and other Writ, “ whereupon any Fine hath, or shall be levied, “ the Return thereof, the Writ of *Dedimus Potestatem*, and “ Return thereof, the Concord, Note, and Foot of every such “ Fine, the Proclamations made thereupon, and the King’s “ Silver, may, upon the request of any Person beinrolled, and “ the Inrolments of the same, or any Part thereof, shall be of “ as good force and validity in Law, as the same being ex- “ tant, or remaining, were, or ought to be by Law.

Sect. II. “ No Fine, nor Proclamations, shall be reversed “ by Writ of Error for false, or incongruous Latin, Rasure, “ Interlining, Misentering of any Proclamations, Misreturn- “ ing



“ ing or not returning of the Sheriffe, or Want of Form in  
 “ Words, and not in Substance.

Se<sup>c</sup>t. V. “ Every Person who shall take the Knowledge of any  
 “ Fines, or shall certify them, shall with the Certificate of  
 “ the Concord, certify also the Year, and Day wherein the  
 “ same was acknowledged, and such Person shall not be in-  
 “ forced to certify such Knowledge, except within One Year  
 “ after the same be taken ; and no Clerk, or Officer, shall re-  
 “ ceive any Writ of Covenant, whereupon any Fine is to pass,  
 “ unless the Day of the Knowledge of such Fine appear by  
 “ such Certificate, upon Pain to forfeit Five Pounds, and no  
 “ Attornment upon any Fine shall be entered on Record, ex-  
 “ cept the Party mentioned to attorn therein first have ap-  
 “ peared in the Court in Person upon the Writ, or by At-  
 “ torney warranted by the hand of One of the Justices of the  
 “ one Bench or the other, or of One Justice of Assize, and  
 “ every entry of Attornment without Appearance as aforesaid  
 “ shall be utterly void, without Writ of Error, or other  
 “ Means used for avoiding thereof.

Se<sup>c</sup>t. VI. “ There shall be for ever One Office for the In-  
 “ rolment aforesaid, and the Justices of the Common Pleas  
 “ (other than the Chief Justice) shall have, and take the Care  
 “ and Charge of the Inrolments aforesaid, and enjoy the said  
 “ Office, and the Disposition thereof, and carefully see, and  
 “ look to the Execution thereof, and shall take for the Inrol-  
 “ ment, and Examination of every Fine, and the Parts thereof  
 “ before mentioned, 6 s. 8 d., and for the Exemplification of  
 “ the Inrolment thereof 5 s. ; and the said Justices, or One of  
 “ them, shall examine the Inrolments of every such Fine, and  
 “ forthwith after Examination, and immediately after Inrol-  
 “ ment, write his Name, that so examineth in the Roll there-

“ of, upon Pain to forfeit to the Queen Five Pounds, for  
 “ every Time that they, or One of them, shall make Default  
 “ of such Examination, or Writing his, or their Name, and  
 “ it shall be lawful for the Justices of the C. B. to take Order  
 “ in all Things needful for the Inrolments aforesaid, and  
 “ upon Examination in the said Court to fine, or amerce any  
 “ Clerk, Sheriffe, Deputy, Attorney, or other Person for their  
 “ Misprision, Contempt, and Negligence for not doing, or  
 “ misdoing any Thing concerning the said Fines, or any  
 “ Part of them, and the said Fine, and Amerciament to be  
 “ estreated amongst other Fines, and Amerciaments of that  
 “ Court where such Offence, or Misprision shall be com-  
 “ mitted.

Sect. VI. “ The Chirographer of Fines of the C. B. shall  
 “ write, and make, or cause to be written and made, for  
 “ every County where Her Majesties Writ runneth, One  
 “ Table, wherein shall be contained such Contents of every  
 “ Fine as shall pass in any One Term, as followeth, *viz.* the  
 “ Name of the County, wherein the Tenements be, the Name  
 “ of every Plaintiffe, and Deforceant, and the Name of every  
 “ Manor named in the Fine, if any such be, and of the  
 “ Towns, and Places where the Tenements lie, and the First  
 “ Day of the next Term after the ingrossing of every Fine, shall  
 “ fix the said Tables upon some open Place in the Common  
 “ Pleas, and so every Day of the said Term during the sitting  
 “ of the Court, and the Chirographer shall deliver to the She-  
 “ riff of every County, written in Parchment, the Content  
 “ of the Table to be made for that Shire, in the Term next  
 “ before the Assizes, or between that Term, and the Assizes,  
 “ and the said Sheriffe the First Day the next Assizes after the  
 “ delivery thereof, and every Day during the said Assizes, shall  
 “ set up the same writing undefaced in some open Place of the  
 Court

" Court where the Justices of Assize sit, and shall see the  
 " same to continue there during the sitting of the Court,  
 " upon Pain that every Chirographer, and Sheriffe, of-  
 " fending against this Act, shall forfeit Five Pounds,  
 " One Moiety to the Queen, and the other to whoever  
 " will sue for the same, in any Court of Record, wherein  
 " no Effoin, Protection, or Wager of Law shall be allow-  
 " ed, and the Chirographer shall have, for the Content, of  
 " such Fine set down in the Table, Four Pence.

Sect. IX. " It shall be lawful for the Justices Clerks  
 " authorised by their Warrant in the said Offices, and  
 " several Places, where the same Records, or any of them  
 " do, or shall remain, to write out, or inrol the same, and  
 " every Part thereof, without paying any Thing. And the  
 " said Records, nor any of them, otherwise than for the Ex-  
 " amination thereof by the Justices, shall be brought or  
 " carried forth of the said Offices, or Places.

" The Provisions in this Act are all extended to *Wales*,  
 " and the Counties Palatine, by the 27 *El.* c. 9."

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31 *El.* c. 2.

### An Act for abridging of Proclamations upon Fines.

**T**HIS Statute, after reciting the Inconveniences, which  
 had arisen from making Proclamations upon Fines  
 Four Times in each Term, according to the 4 *H.* 7. Enacts,  
 That all Fines with Proclamations shall be proclaimed only  
 Four Times, that is to say, once in the Term, wherein it is  
 ingrossed, and once in every of the Three Terms next after

2

the



the same ingrossing; and that every Fine proclaimed as aforesaid shall be of as great force and effect in Law, to all Intents and Purposes, as if the same had been Sixteen Times proclaimed, according to the Statutes heretofore made.

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21 J. I. c. 26.

21 Jac. I. c. 26.

Sect. II. **A**LL, and every Person, and Persons, which shall acknowledge, or procure to be acknowledged any Fine, or Fines, in the Name, or Names of any other Person, or Persons not privy, or consenting to the same, and being thereof lawfully convicted, or attainted, shall suffer Death without Benefit of Clergy, but such Attainder shall work no Corruption of Blood, but the next Heir shall have the Lands, whereof such Persons attainted died seized, and such Wife her Dower, as if no such Attainder had been.

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10. & 11. Gul. III. c. 14.

For limiting the Time within which Writs of Error shall be brought.

Sect. I. **T**HIS Act, after reciting that Fines, Recoveries, and Judgments, are reverfible at any Time without Restraint, or Limitation for any Error, or Defect which happens therein by the *Ignorance, or Careleffness of Clerks*, and sometimes by unavoidable Accidents, enacts, That no Fine, Recovery, or Judgment in a Real Action, *etc.* shall be reversed, or avoided for any Error, or Defect therein.



therein, unless the Writ of Error, or Suit for the reversing such Fine, *etc.* be brought, and prosecuted with effect within Twenty Years after such Fine levied, *etc.*

Sect. II. Saves the Rights, of Infants, Feme-coverts, *non compos mentis*, Persons in Prison, or beyond Sea, to them their Heirs, Executors, and Administrators, notwithstanding the said Twenty Years be expired, so as they bring their Writ of Error within Five Years after their Disabilities removed.

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4 *Annæ*, c. 16.

Sect. IX. **A**LL Grants and Conveyances to be made by Fine, or otherwise of any Manors, or Rents, or of the Reversion, or Remainder of any Messuages, or Lands shall be good, and effectual to all Intents, and Purposes, without any Attornment of the Tenants of any such Manors, or of the Land out of which such Rents shall be issuing, or of the particular Tenants upon whose particular Estates any such Reversions, or Remainders shall, and may be expectant, or depending, as if their Attornment had been had and made.

Sect. X. Saves the Tenant from prejudice by Payment of Rent, or Breach of Condition for Nonpayment thereof, before Notice from the Grantee, or Conusee.

Sect. XV. Whereas it has been doubted, whether, since the 29 C. 2. the Declarations or Creations of Uses, Trusts, <sup>29 Car. 2. c. 3.</sup> or Confidences of any Fines or Common Recoveries, manifested by Deed made *afterwards* be good, and effectual in Law: It is declared that all Declarations, or Creations of <sup>V. Post Sect. 18.</sup> Uses, Trusts, or Confidences of any Fines, or Common Recoveries

recoveries of any Lands, Tenements, or Hereditaments, manifested, and proved, or which hereafter shall be manifested, and proved, by any Deed already made, or hereafter to be made, by the Party, who is by Law enabled to declare such Uses, or Trusts, after the levying, or suffering of any such Fines, or Recoveries, are, and shall be as good and effectual in Law; as if the said last mentioned Act had not been made.

Post. Sect. 11.

Sect. XVI. No Claim or Entry to be made of, or upon any Lands, Tenements, or Hereditaments, shall be of any Force or Effect to avoid any Fine levied, or to be levied, with Proclamations according to the Form of the Statute in that Case made, and provided, in the Court of Common Pleas, or in the Courts of Sessions in any of the Counties Palatine, or in the Courts of Grand Sessions in *Wales*, of any Lands, Tenements, or Hereditaments, or shall be a sufficient Entry, or Claim within the Statute of Limitations, unless upon such Entry, or Claim an Action shall be commenced within One Year next after the making of such Entry, or Claim, and prosecuted with Effect.

7 Jac. I. c. 16.



SECT.

## S E C T. VII.

## Who may levy a Fine.

## I. What Persons. II. Of what Estates seised.

**T**HE King being seised in his natural Capacity, and all <sup>a</sup> 7 Co. 32<sup>a</sup>  
 other Persons who may lawfully Grant by Deed, may  
 be Conusors, and levy a Fine; and though the Justices  
 ought not to take a Fine of those who are under Disabi-  
 lities, or want Understanding, <sup>b</sup> yet if a Man of *non sane* <sup>b</sup> 7 Co. Read. 3.  
 Memory, Ideot, One born Dumb, Blind, and Deaf, or by  
 Duress, Fear of Imprisonment, Menace of Death, or Mai-  
 hem, levy a Fine, it will bind him for ever, and neither he  
 nor his Heirs can avoid it.

<sup>c</sup> In the 9th of *El.* one *Busbley* an Infant was ravished out <sup>c</sup> 12 Co. 124<sup>a</sup>  
 of the Custody of his Guardian, and carried to a Place un-  
 known, and kept in secret, till he had acknowledged a Fine,  
 and declared the Use thereof to the Conussee, and though he  
 was afterwards found by Inquisition to have been an Ideot  
*a nativitate*, and was produced in the Common Pleas where  
 his Want of Understanding appeared manifest to the Justices,  
 yet the Fine was held to be good, <sup>d</sup> and the Law is the same <sup>d</sup> 4 Co. 124<sup>a</sup>  
 with regard to those, who lose their Understanding, as to  
 the natural Ideot who never had any. <sup>e</sup> But where a Man <sup>e</sup> 2 Vern. 678<sup>a</sup>  
 had sold his Lands at a great Undervalue, and conveyed  
 them by Deeds, Fines, and Recoveries, and by Inquisition

G

was

was found to be a Lunatick, upon a Bill brought by his Committee against the Purchaser, the Purchase was set aside, allowing the Defendant what Money he had really paid.

With regard to the Cases of Infants, and Feme-coverts, there are many Diversities to be noted, how far they shall be bound, and in what Cases Fines levied by them are unavoidable.

<sup>2</sup> 12 Co. 123.  
<sup>3</sup> Salk. 196.  
<sup>2</sup> Rolls Abr.  
<sup>35</sup>.

<sup>2</sup> Rolls Abr.  
<sup>572, 573</sup>.

<sup>1</sup> Co. Lit. 380.  
<sup>b</sup>.

<sup>2</sup> 2 Bac. Abr.  
<sup>326</sup>.

'If an Infant levies a Fine, he may reverse it by Writ of Error during his Minority, but otherwise it is unavoidable in Law, and the Heirs of the Infant have not any Remedy by the Law to reverse it, because the Age of the Infant is not to be tried but by Inspection of his Person, though if, upon Inspection, the Court are in doubt of his Age, they may inform themselves by Examination of Witnesses, Church Books, &c.; and if Infancy should be tried otherwise than by Inspection, no Man should be sure of his Inheritance, for many Years after the Death of the Conusor Averment might be made, that he was within Age at the Time of the Fine levied, which would be a Cause of great Vexation, and Suit: But if the Age of the Infant be inspected by the Judges, and it is recorded, that he is within Age, albeit he come to full Age before the Reversal of the Fine, yet it may be reversed after his full Age. <sup>b</sup> And where an Infant had acknowledged a Fine, and the Conusees omitted to have the Fine ingrossed till he came of Age, in Order to prevent the Infant from bringing a Writ of Error, yet the Court upon View of the Conusans produced by the Infant, and upon his Prayer to be inspected, and have his Age examined, recorded his Nonage, to give him the Benefit of his Writ of Error, which he must otherwise lose, his Nonage determining



ing before the next Term, and the same has been done formerly, where the Defendant in Error cast a Protection. <sup>1</sup> Co. Litt. 131. a. 2 Rolls. Ab. 571.

\* A Fine having been levied by an Infant Feme-covert by *Ded. Potestatem*, after her Death, her Heir prayed the Relief of the Court, but all the Judges of the Court of C. B. agreed that the Fine could not then be set aside; but if the Wife had been alive, and still under Age, she might have been brought up by *Hab. Corpus*, her Age inspected, and the Fine set aside upon Motion. Upon the whole then it appears, that if an Infant levies a Fine, he may avoid it by Writ of Error during his Minority, or if his Nonage is inspected and recorded, he himself may reverse the Fine after his full Age, or his Heir, in Case of his Death, but if he neglects to bring his Writ of Error during his Minority, and comes to full Age, or dies, his Infancy not being inspected, and recorded, he, and his Heirs, are concluded for ever, and the Fine is then become unavoidable in Law. <sup>1</sup> Mod. 246. <sup>2</sup> Vent. 30. <sup>3</sup> Salk. 168. Co. Litt. 131. a.

† If an Infant dies during his Nonage, before he hath avoided a Fine, it seems his Heir can never avoid it, and yet upon this Point the Judges of the Common Pleas have been divided on a solemn Argument, and of this Justice *Dodridge* in the 17 *Jac.* made a Quere. <sup>1</sup> Shep. Touch. 7.

‡ Though a Common Recovery may be suffered by an Infant by Virtue of the King's Special Direction signified to the Justices by Privy Seal, yet a Fine cannot be levied in the same Manner. <sup>1</sup> Vern. 461.

§ If Commissioners knowingly take the Conusans of an Infant, they may be fined. <sup>1</sup> 12 Co. 123. <sup>3</sup> Salk. 168.

Co. Read. 7.  
De modo de-  
vandi Fines  
Ante 22.

A Feme-covert ought not to levy a Fine without being examined; for the Statute says, "*that if a Feme-covert be One of the Parties, she ought first to be examined by the Justices, and if she doth not assent thereunto, the Fine shall not be levied.*"

2 Inst. 515.  
Co. Lit. 353.a.

This Examination shall be solely, and secretly, and the Effect thereof is, whether she be Content of her own free good will, without any Menace, or Threat, to levy a Fine of these Parcels; and it is said by Sir *Edward Coke*, that every Thing contained in the Writ is to be distinctly named unto her, so that she may perfectly understand what she doth, and if the Judge doubteth of her Age, he may examine her upon her Oath. But though the Fine ought not to be received, unless she is examined, and freely assents,

7 Co. Read. 8.  
2 Inst. 515.

yet if she levies a Fine with her Husband, and is not examined, this will bind her and her Heirs for ever, and they have no Remedy to reverse it after it is received, and recorded; for they shall not be admitted to aver that she was not examined, nor assented, for this should be against the Record of the Court, and tending to the weakening of the general Assurances of the Realm, but it is a great Offence in the Justices to accept such a Fine without Examination.

Litt. Sect.  
670.7 Co. Read.  
2 Inst. 515.

And because where any Thing *passes from* the Wife by Fine, she ought to be examined, and this Examination must ever be upon the Writ, therefore upon a Fine levied to the Husband and Wife of Lands, they may grant and render the same Lands to the Conusor, but they cannot grant and render a Rent issuing out of these Lands, because that is not contained in the Writ.

2 Roll's Abr.  
26.

If Baron and Feme levy a Fine, and afterwards are divorced

forced for any Cause antecedent to the Marriage, yet the Fine will remain good.

<sup>t</sup> If a Feme Covert levies a Fine as a Feme sole, and her Husband enters, and avoids the Fine, and dies, the whole Estate is so avoided, as it shall not bind the Wife, nor her Heirs after his Death, but if the Husband does not defeat it, the Wife and her Heirs will be bound by it for ever.

<sup>t</sup> Co. Lit. 46. a.  
<sup>7</sup> Co. Read. 9.  
<sup>2</sup> Rolls Abr.  
20.

<sup>u</sup> When the Husband and Wife levy a Fine of the Wife's Land, the Husband only joins for Necessity, and the whole Estate passeth from the Wife, and the Conussee is in by her only; and if the Fine be reversed for the Nonage of the Wife by Writ of Error brought by the Husband and Wife, the Estate shall be restored to the Wife during the Life of the Husband.

<sup>u</sup> 2 Co. 57. b.  
<sup>2</sup> Co. 77. b.  
<sup>1</sup> Rolls Abr.  
748.

<sup>\*</sup> If a Feme Covert levies a Fine executory as a Feme Sole, and afterwards Execution is sued against her, and her Husband, and the Husband makes Default, and the Feme is received, she shall defeat her own Fine, for the Benefit of her Husband, and yet she appears in like Manner as a Feme Sole.

<sup>7</sup> Co. Read. 9.  
Co. Litt. 352. a.

<sup>v</sup> In all Cases where any Thing shall *pass from* the Wife, which is Covert of an Husband, by force of a Fine, she ought to be examined before the Fine be taken, because she, and her Heirs will be concluded by it for ever, but where the Wife *takes at Estate* by Fine levied to her, and her husband, this shall not conclude the Wife, and her Heirs, because in such Case she shall not be examined, and therefore such a Fine may work a Remitter.

<sup>v</sup> Litt. Sect.  
669, 670.  
<sup>2</sup> Inst. 515.

<sup>\*</sup> If a Feme-covert levies a Fine of her own Land that she

<sup>\*</sup> Shep. Touch.



she hath in Fee-simple alone, her Husband may avoid it, if he will, by Writ of Error, Entry, or otherwise, during her Life, or after her Death, if he be Tenant by the Curtesy.

Shep. Touch.  
18.

If a Feme-sole makes Conusans of a Fine, and before it be certified, and ingrossed, she takes an Husband, this will not let, but the Fine may be finished; and albeit it be recorded, and sued out in her Name as Sole, whereas in Truth she is Covert, and of another Name, yet is the Fine a good Fine; however in this Case the Books say, that it is not amiss to get a Release of Errors from the Husband.

Shep. Touch.  
7.

If a Man attainted of Treason, or Felony, levies a Fine, it will be good against all Persons, except the King, or Lord of whom the Land is holden, but such Fines ought not to be received.

1 Lev. 33.

If an Out-law in a Personal Action levies a Fine before Seizure, it is good; and the Conussee shall hold the Land against the King, otherwise if seizure be made before the Fine levied.

22 Co. Read.  
17.

If an Alien levies a Fine, the Fine is good, but will not conclude the King after Office found.

7. & 8. Co.  
Read. 8. & 9.  
10 Co. 32. b.

\* 18 E. 1.  
15 E. 2.

Lord *Coke* says, that Corporations Aggregate cannot levy a Fine, because they cannot appear otherwise than by Attorney, and the Statutes require the Parties to appear personally before the Justices, which a Corporation Aggregate of many, being an invisible Body, and resting only in Intendment, and Consideration of Law, cannot do. But Sole Corporations having Power to alien their Lands, are

2 capable



capable of levying a Fine. All Ecclesiastical Corporations Sole and Aggregate are <sup>b</sup> restrained from aliening their Lands to the Prejudice of their Successors, and therefore it <sup>c</sup> hath been adjudged, that their Nonclaim, upon a Fine levied by a Disseisor, shall not bind the Successor after their Decease, notwithstanding Five Years pass according to the 4 H. 7. for <sup>d</sup> it would have been of no Effect to have prohibited them to bar the Right of their Successors by Conveyances made by themselves, and to have left them Power by their Permission, or Sufferance, and Nonclaim, to bar it. But Corporations, which have the intire Fee in them, and are not restrained by Statute from Alienation of their Lands, shall be bound by a Fine levied by a Stranger and Nonclaim for Five Years.

<sup>b</sup> 1 E. c. 19.  
<sup>c</sup> 17 El. c. 1.  
<sup>d</sup> 11 Co. 78. b.  
 Plow. 376. 518.  
 1 Vent. 311.

<sup>d</sup> H. 7. c. 24.

II. With regard to the Estate whereof One of the Parties to the Fine ought to be seized, it is to be known, that every Tenant in Fee-simple, Fee-tail general, or Special, Tenant in Tail after Possibility of Issue extinct, by the Curtesy, in Dower, or any other Tenant of a Freehold, <sup>e</sup> be it in Possession, Reversion, or Remainder, or whether they are sole seized, or hold in Jointenancy, Coparcenary, or in Common, may levy a Fine; and it is immaterial whether such Estate be lawful or tortious, for a Disseisor is equally able to levy a Fine, as he who is in by good Title.

<sup>d</sup> 3 Co. 90. a.  
 Shep. Touch.  
 14.

<sup>e</sup> Also a Fine of Cestuique Trust shall bar, and transfer a Trust, as it should an Estate at Law, if it were on good Consideration. <sup>f</sup> But those who are possessed of any Interest less than a Freehold, as Tenants for Years, Copyholders, &c. cannot levy a Fine to bar, or prejudice Strangers; for a Fine levied by them, will only operate by way of Estoppel between the Parties thereto; but all other Persons, not Parties,

<sup>e</sup> Chan. Cas.  
 49.

<sup>f</sup> 5 Co. 113. b.  
 Co. Comp.  
 Cop. 62.

ties, may shew that the Freehold Estate, and Seizin of the Land, was in another before, and at the Time of the Fine levied, and that *Partes Finis nihil habuerunt Tempore levationis Finis*, and by this avoid the Fine.

3 Co. 90. a.  
20 Co. 50. a.

A Fine may be levied of a Right *in futuro*, or of a Possibility, and will be sufficient to bar the Issue in Tail.



SECT.

## S E C T. VIII.

## Who may take by Fine.

**A**LL Persons who may be Grantees, or take by other Conveyances, may be Conusees, and take by Fine: as Infants, Persons of full Age, Feme-coverts, Idiots, Lunatics, Corporations Sole, or Aggregate (for an Estate may be taken by Fine by Attorney), Spiritual, or Temporal, Men attainted of Treason, or Felony, Outlaws, &c. or any Persons, except those who were formerly held to be civilly dead, as Monks and the like.



H

SECT.

## S E C T. IX.

What Persons, and what Rights, barred by Fines.

4 H. c. 24.  
32 H. 8. c. 36.

**T**HE Persons barred by Fines are either Parties, Privies, or Strangers, and the Force and Effect of Fines in barring these depends upon the several Clauses of the 4 H. 7. and the 32 H. 8.

2 Inst. 516.  
Shep. Touch.  
31.

Ante 31, 32, 33.

\* Parties, are those who are Parties to the Original Writ, or those by whom, and to whom the Fine is levied, and these are barred presently, be they under any Impediments whatsoever, except in those particular Cases of Infancy and Coverture, specified in Section the Seventh, for Parties are expressly excluded from any Benefit, by the Exception and Savings in the 4 H. 7.

2 Inst. 526.

19 Co. Read.  
26.

\* Privies in Blood ~~inheritable~~, or who claim as Heirs under the Estate of those who were Parties to the Fine, are here only to be understood, whether they are Heirs by the Common Law, or by Custom, as *Borough English*, *Gavelkind*, or the like, and Privies also include those who claim in any other Right of Representation, and Vendees, Devisees, and all others who must make Title by the Persons who levied the Fine; \* but if there be Father and Son, and the Father disseises the Son, and levies a Fine with Proclamations, and the Father dies within the Five Years, the



the Son is not barred, because he claims in his own Right, and not in the Right of his Father, for *Hæres dicitur ab Hæreditate*, but those who are Privy, and claim as Heirs by the same Title, as the Ancestor who levies the Fine, are barred presently, as the Issue in Tail upon a Fine levied by his Ancestors; <sup>d</sup> for he claims only as Heir by Force of the Estate Tail, and shall therefore be barred, altho' beyond Sea, within Age, under Coverture, *non compos*, or in Prison; for he is barred by the express Words of the 4 H. 7. and 32 H. 8. and aided by no Exception, or Saving, and cannot by any Claim avoid the Fine of his Ancestor.

<sup>d</sup> 1 Co. 87. a.  
91. a.  
Shep. Touch.  
25

\* The Statutes, the 4 H. 7, and 32 H. 8. extend to Fines levied by Conclusion, and bind the Estate Tail, altho' *Partes Finis nihil babuerunt*, as if Tenant in Tail makes a Feoffment in Fee, or is disseised, and afterwards levies a Fine with Proclamations to a Stranger, the Issue in Tail are barred for ever; and it is to be observed, that the Statute 32 H. 8. saith, "All Fines levied of any Lands, Tenements, or Hereditaments, in any-wise intailed to the Person, or Persons so levying the same, or to any of his Ancestors, etc." and the Land is intailed to the Person who levied the Fine, altho' he was not seized thereof at the Time, and in the 4 H. 7. the Saving is, "To every Person, or Persons not Party, nor Privy to the said Fine, their Exception, *Quod Partes Finis nihil babuerunt*," and the Issue in Tail is Privy, for he claims as Heir and by Descent, and if when the Tenant in Tail hath nothing at the Time of the Fine levied, the Issue shall be barred by the said Statutes, *à fortiori*, when Tenant in Tail at the Time of the Fine levied, is seized of an Estate Tail, (be it in Possession, Reversion, or Remainder), which may in Truth, and not by Conclusion only, pass by the said Fine, the Issue shall be barred by the said Statutes.

<sup>e</sup> 1 Co. 92. a.  
Shep. Touch.  
24

Ante 37.

Ante 33. 34.

1 Co. 87. b.  
9 Co. 140. b.  
141. a.  
Dyer 352. Pl.  
24.  
Shep. Touch.  
24.

If the Husband, and Wife have a Joint Estate in Tail, and the Husband alone levies a Fine with Proclamations, the Estate Tail as to the Wife will have Continuance, if she enters within Five Years after his Death, but the Right of the Issue in Tail will be barred by Force of the 32 H. 8.

Shep. Touch.  
26.

If Lands be given to the Grandfather, and his Wife in Special Tail, and the Grandfather dieth, and the Father disseises the Grandmother, and levies a Fine with Proclamations, and then the Grandmother dies, and after the Father dies, in this Case the Son is barred. <sup>1</sup> So if Lands be in-

13 Co. 50, 51.  
9 Co. 140.  
21 H. 7. c. 20.

tailed to a Woman for her Jointure within the Statute 11 H. 7. and while she liveth, the Issue in Tail doth levy a Fine of the Land, by this the Issues inheritable to the Estate Tail are barred for ever. So if Tenant in Tail die, and his Issue before his Entry (having a Freehold in Law only) doth levy a Fine with Proclamations, this shall be a bar to his Issues, and to his collateral Heirs, and Brothers of the Half Blood. So if Tenant in Tail has Four Daughters, and one of them levies a Fine in the Life of the Father, this will be a Bar to her Issue for a Fourth Part of the Land; but in these Cases, and such like, where the Issue in Tail doth levy a Fine in the Life of the Tenant in Tail, the Tenant in Tail may after himself levy a Fine of the Land, and thereby bar his Issue, and the Conusee also, to whom his Issue hath levied a Fine; and therefore in all these Cases it is supposed, that the Tenant in Tail doth die, and suffer the Right to descend to his Issue.

Shep. Touch.  
25.

A Double Fine with a *Grant*, and *Render* is within the Statutes, and will bar the Issue in Tail as well as a single Fine, so as the *Grant*, and *Render* be of the Land itself, and not of any Profit *Apprendre* out of the Land, and therefore if Husband, and Wife, Tenants in Special Tail, levy a Fine with Proclamations,

Proclamations, and the Conusee grants, and renders the Land to them, and their Heirs, this Fine will bar the Issue in Tail, <sup>1</sup> or if *A.* Tenant in Tail, and *N.* do by Fine acknowledge the Land to be the Right of a Stranger, as that, *etc.* and then the Stranger that is the Conusee doth Grant, and Render the Land again to *N.* for Life, or Years with Clause of Distress, *etc.* and then Grant, and Render the Reversion to the Tenant in Tail, this is a good Fine, and will bar the Issue in Tail, and pass the Rent, and Reversion to the Tenant in Tail.

<sup>1</sup> Shep. Touch. 16.

<sup>1</sup> Strangers are those who are not Parties to the Fine, nor Privies, and are either, <sup>m</sup> 1. Such as have present Right, and no Impediment, and these are barred, if they make not their Claim within Five Years after the Proclamations, according to the First Saving in the 4 *H.* 7.

<sup>1</sup> Plow. 363.

<sup>m</sup> Shep. Touch. 21, 22.

2. Such as have present Right but are under Impediment of Infancy, *etc.* and these are barred, if they claim not within Five Years after their Impediments removed, according to the Clause in Section the Sixth.

Ante 322.

3. Such as have no present, but only a future Right upon Cause precedent; and they are either with, or without Impediments: If with Impediments they are barred, unless they claim within Five Years after their Right doth accrue. If they have Impediments, then they are barred, unless they claim within Five Years after their Impediments removed. And this is by the Second Saving.

4. Such as have neither present nor future Right, at the Time of levying the Fine by Reason of any Matter before the Fine, but whose Right groweth either entirely after, or partly before, and partly after the Fine, and these are not barred at all by the Fine, but they may make their Claim when they will.

Ante 322.  
Sect. 4. & 5.

With



<sup>m</sup>Shep. Touch.  
30.

With regard to those who have present Right, as if a Disseisor levies a Fine with Proclamations of the Land, whereof the Disseisin was, the Disseisee must make his Claim within Five Years after the Proclamations had, unless under Impediments, and if he happens to die within the Five Years, his Heirs shall not have Five Years more, but only so much more as will make up the Time incurred in his Father, or other Ancestors Time Five Years; and <sup>a</sup> albeit he be an Infant at the Time of his Ancestor's Death, yet he shall have no longer Time.

<sup>a</sup> Plow. 355.

<sup>a</sup> 3 Co. 87. a.  
b. Plow. 374.

So if Tenant in Tail be disseised, and the Disseisor levies a Fine with Proclamations, and Five Years pass, and afterward the Tenant in Tail dies, there the Issue in Tail is barred, for there after the Fine levied the Tenant in Tail himself had present Right, so that the Issue in Tail was not the First to whom the Right did *accrue*, and *descend* after the Fine levied. But if Tenant in Tail makes a Feoffment in Fee, and the Feoffee levies a Fine with Proclamations, the Issue in Tail, after the Death of his Father, shall have Five Years by the Second Saving. And in the same Manner all others, who fall under the Third Description of those who have only a future Right upon Cause precedent, as those in Reversion, or Remainder upon Estates for Life, or in Tail, they shall have Five Years to pursue their Rights, after the Determination of those Estates, before they shall be barred by the Fine, either of the Tenants themselves, their Feoffees, or Disseisors.

Ante 32.

<sup>a</sup> Plow. 373.  
<sup>m</sup>Shep. Touch.  
32.

If a Mortgagee is disseised, and a Fine is levied by the Disseisor, and Five Years pass after the Proclamations, and afterwards the Mortgagor pays, or tenders the Money, he shall have Five Years after his Payment, or Tender, for his

Title



Title first accrued to him, after the Proclamations by the Payment, or Tender, upon Cause, or Matter before the Proclamations, *viz.* By the Condition made before the Fine.

¶ Also, if the Husband levies a Fine of Land whereof his Wife is dowable, she shall have Five Years after his Death to make her Claim, and will not be bound by Five Years after the Fine.

¶ Plow. 373.  
Dyer 224.  
13 Co. 29.  
Shep. Touch.  
28. 32.  
2 Co. 93. 2.

4. Where the Right accrues after the Fine, but not upon Matter, or Cause before the Fine, as if the Tenant cesser One Year, Part of which was before the Fine, and Proclamations passed, and another Year which ends after the Proclamations, these Two Years are but One Cause, or Matter, which gives the *Cessavit*, and not Two Matters, and therefore the Lord shall have his *Cessavit* 20 Years after the Proclamations, and shall not be bound to Five Years; for the Purview was not against the Lord in such Case, because he had no Right to the Land at the Time of the Fine, nor was his Title to the Land then *in esse*, altho' the Cesser commenced before the Fine levied, but his Title shall be said to accrue wholly after the Fine, *viz.* At the End of the Two Years, for which Cause the Lord is at Large, and not bound to Five Years to bring his *Cessavit*.

¶ Plow. 373.  
Shep. Touch.  
33. 34.

¶ Strangers under Impediments at the Time of the Fine levied, and Proclamations, having any present Interest, or Right shall have Five Years after their Impediments removed to make their Claim, *etc.* and therefore an Infant regularly shall have Time for Five Years, after his full Age, to make his Claim, *etc.* albeit he be in his Mother's Womb at the Time of the Fine levied.

¶ Shep. Touch.  
31.

Those

Plow. 375.  
Shep. Touch.  
31.

Those who are not under Impediments at the Time of the Fine levied, but become so against their will after the Fine levied, and before the last Proclamation, and continue in that State at the Time of the last Proclamation, shall not be bound to Five Years after the last Proclamation, but shall have Five Years next after their Impediments removed.

Plow. 366.  
Shep. Touch.  
31.

If a Stranger having present Right, after the Fine, and Proclamations, goes beyond Sea, and there continues Five Years, or being a Feme Sole, takes a Husband who neglects to make Claim within Five Years, she shall be barred forever, because there are voluntary Acts; but by the Opinion of *Saunders* and *Brown*, where the Stranger is imprisoned, or becomes *non sana memoria* after the Fine, and Proclamations, and so continues till the Five Years are expired, he shall not be bound; for these are involuntary Acts, and against the Will of the Party. *Sed Quare.*

Plow. 375.  
Shep. Touch.  
32.

If One has divers Defects, or Impediments, as if a Woman who has present Right, or when the future Right falls, is Covert, and within Age, and not of whole Mind, and in Prison, and One, or more of the Impediments are removed, the Five Years appointed to her by the Statute shall not commence until the last Defect, or Impediment is removed, and when she is once void of all Impediments, then the Five Years shall commence, and if the Person whose Defects, and Impediments are Once after the Proclamations made wholly removed, falls into the like again, and continues so all the Five Years, or dies within the Five Years, his Heir within Age, the Five Years before commenced shall proceed, and Nonclaim within the same Five Years, shall bind the Party, and his Heirs, as well as if he had been void of all Impediments during the whole Five Years.

Years; And so it seems in all Cases both of present, and future Rights, that where the Five Years first commence in the Life of the Ancestor, and he dies before they are all expired, the Heir shall be barred, unless he makes his Claim, *etc.* during the Residue of those Five Years, even tho' he is under Impediments at the Time of the Death of his Ancestor.

Sir *Edward Coke* in his Second Institute, commenting on this Statute of 4 H. 7. reports a Case, in which *Thomas Cotton* was Tenant in Tail of the Moiety of certain Lands, and of the other Moiety he was Tenant for Life, Remainder to *William Cotton* his eldest Son in Tail. *William Cotton* went beyond Sea to *Antwerp*, and afterwards *Thomas Cotton* in the 19 *El.* levied a Fine with Proclamations, and within the Year *William Cotton* died at *Antwerp*, and never came into *England*. *William* his Son, being within Age, entered in the 31 of *El.* And it was adjudged, That for the Moiety whereof *Thomas Cotton* was Tenant in Tail, *William* the Son of *William* was barred by this Act of the 4 H. 7. But for the Moiety of *William* the Father, the Entry of his Son *William* was lawful. And then he goes on to state as the Reasons of the Determination, that altho' *William* the son could not take Advantage of the Clause, that gave Benefit to him that is beyond Sea, and his Heirs to enter, or take his Action within Five Years after they be within this Land, because in this Case, *William* the Father, after the Fine levied, never was in the Land; yet for that Persons out of the Realm at the Time of the Fine levied amongst others having a present Right, are excepted out of the Body of the Act which worketh the Bar; therefore he that is beyond Sea at the Time of the Fine levied, and never returns, is within the Exception out of the Body of the Act, and his

I

Heirs



Heirs may enter, or take their Action at any Time; but in case he doth return, he and his Heirs must enter, or take his Action within Five Years after his Return; and then Sir *Edward Coke* goes on to say, So it is of an Infant not being Party to the Fine, and having a present Right, if he dieth during his Infancy, his Heir may enter, or take his Action at any Time; and so it is of a Person that is *non compos* by the Act of God, if he dies while he is *non compos*, or a Man in Prison, which is by Act in Law, if he dies in Prison, or a Feme-covert, which is by her own Act, if she dies while she is Covert, being no Parties to the Fine, for all these are within the Reason of the Case adjudged of him that is out of the Realm, and never returned. And the same

<sup>a</sup> 4 Co. 125. b. Doctrine is laid down by Sir *Edward Coke* in his Report of *Beverley's Case* in the 1st of *Jac. I.*; but in *Cotton's Case*, as reported by <sup>b</sup> 1 Leon. 215. *Leonard*, altho' the Adjudication is the same as is stated by Sir *Edward Coke*, yet *Drue Serjeant*

<sup>213.</sup>

who argued for *William Cotton*, admits, that by the bare Letter of the Act, *William Cotton* had no Remedy, because his Father never returned to *England*; and then he goes on to insist that *William Cotton* ought to have Five Years to make his Claim by the Equity of the Statute: And *Anderfon* Chief Justice is reported to have delivered as his Opinion, "That altho' *William* the Father did not return, yet if *William* the Son makes not his Claim within Five Years next after the Death of his Father, *being of full Age, and without Impediments*, he shall be barred, but if the Ancestor dies under any of the Impediments mentioned in the Statute, and his Heir is within Age, or hath other Impediment, he is not bound to make his Claim till Five Years after his Impediment is removed." If we consider merely the Point adjudged, and necessary to be decided in this Case, it is no more than this, That the Heir is not barred by the Statute immediately



immediately upon the Death of his Ancestor, whose Disability is never removed, but may make his Claim afterwards : But whether at any indefinite Period of Time, according to the Opinion of Sir *Edward Coke*, or whether within Five Years next after the Death of his Ancestor, the Heir himself being free from Disabilities, seems to be a Matter of some Doubt. In order to support the Opinion of Sir *Edward Coke*, the Construction of the Statute appears to me to be this, That Persons under the Disabilities mentioned in the Second Section, being excepted out of the Body of the Act, would never have been barred either with Respect to themselves or their Heirs, for Neglect in not prosecuting their Rights within any fixed Period of Time, unless they had been bound by the Sixth Section to make their Claim within Five Years after their Disabilities removed, and that the Word *Heirs* in that Section must be confined to the Case of the Ancestors' Disability being removed in his Life-time, and Part of the Five Years begun to run before his Death, that then the Heir shall be barred, unless he makes his Claim before the Remainder of the Five Years is run out, but that there is no Provision whatever for the Case of the Heir whose Ancestors' Disability is never removed, and that therefore the Heir must be immediately barred forever on the Death of his Ancestor, or else that he, and his Heirs *in infinitum* shall be at Liberty to make their Claim when they will; and that to avoid making so harsh a Construction of the Act, as to bar the Heir in such a Case, who is guilty of no Laches, or Neglect whatsoever, without giving him any Opportunity at all to make his Claim, he is to be considered in the same Situation, as if the Statute of the 4 H. 7. had never been made. In order to support the Opinion of *Anderson*, the Construction must be either, That the Word *Heirs* in the Sixth Section does

expressly extend, or by an equitable Construction is to be taken to extend to the Case of the Heir, whose Ancestor dies under a Disability, and that the Heir in such Case, if himself under no Disability, will have Five Years after the Death of his Ancestor, and no longer, to avoid the Fine, or if himself under any Disability at the Time of his Ancestors' Death, that then he will have Five Years after his own Disability removed.

As I have not met with any other judicial Determination, in which this Point has come in Question †, and as from the Difference of Opinion between Sir *Edward Coke*, and *Anderson*, it seems to remain a Doubt; I have endeavoured merely to state what appears to me to be the Grounds of Argument on both Sides, submitting them to the better Judgment of my Readers, without presuming to intimate any Opinion either on the one Side, or the other.

• 15 Co. Read.  
Plow. 358.  
Shep. Touch.  
33.

• If he who has Right neglects to make his Entry or Claim within Five Years after the Fine, and Proclamations, now he is barred, but if the Estate, which passed by the Fine is

† I am informed that this Point was lately argued before the Judges on the *Chester* Circuit, and is not yet determined.

In *Cro. Car.* 200. there is a short imperfect Note of a Case between *Halm* and *Heylock*, in which, by what I collect from the Book, the Facts must have been these; *John Metcalf* devises Lands to *John Gallant* an Infant in Fee, and dies, *Henry Metcalf*, enters and levies a Fine thereof with Proclamations, 16 *Jac.* 1. in the Life of *John Gallant*, who after dies *within Age*, leaving the Wife of the Defendant *Heylock*, his Heir, and Five Years pass after the Infant's Death without any Claim made by *Heylock*, or his Wife: And now at a Trial at Bar in Ejectment, 16 *Car.* II. the Court delivered for Law to the Jury, "that the Fine and Nonclaim should bar the Husband, who suffered the Five Years to pass, and all claiming under him, and the Wife herself, during the Coverture; but that she should have a new Five Years after the Death of her Husband." The Opinion of the Court as here stated agrees with that of *Anderson* above mentioned, but the Case seems to have been determined without Argument, or Consideration, and therefore Q. How far it is to be relied on as an Authority?

afterwards

afterwards defeated, his Right is restored again; as if a Disseisor, Abator, or the like makes a Feoffment in Fee upon Condition, and the Feoffee levies a Fine with Proclamations, and Five Years pass, now the Disseisee, or Heir, is barred, but if after the Feoffor enters for the Condition broken, the Right of the Disseisee, or Heir is revived, and he may enter, or bring his Assize when he will.

2. *What Rights are barred by Fines.* And here it is first to be observed, <sup>d</sup> That no Fine shall bar any Estate in Possession, Reversion, or Remainder, that is not divested, and put to a Right; for he who has the Estate, or Interest in him, cannot be put to his Action, Entry, or Claim, because he has that which his Action, Entry, or Claim, would give him; and therefore if One levies a Fine of my Land whilst I am in Possession of it, this Fine will not hurt me, but I may shew that I was seized before, and at the Time of the Fine levied; and that *Partes Finis nihil babuerunt tempore levationis Finis*, and by this avoid it.

<sup>d</sup> 9 Co. 106. 2.  
<sup>3</sup> Co. 123, 124.  
Shep. Touch.  
<sup>23</sup>.  
<sup>2</sup> Inst. 517.  
Cro. Jac. 60.  
<sup>1</sup> Vent. 81.

<sup>e</sup> If I purchase Land of *A.*, and after perceiving my Title defeasible, and that a Stranger hath the Right of the Land, I levy a Fine to, or take a Fine from another with Proclamations, with Intent, and of Purpose to bar him that hath Right, and he suffereth Five Years to pass, and does not make his Claim, *etc.* hereby he is barred of his Right for ever, and in this, and the like Case, there is no Relief to be had in Equity.

<sup>e</sup> Shep. Touch.  
<sup>29</sup>.  
<sup>3</sup> Co. 79. 2.  
Dr. and Stud.  
B. 1. D. 25.

<sup>f</sup> Tenants by Statute Merchant, Staple, Elegit, Executors who have Lands, till Debts, and Legacies are paid, and every other such Interest, and he who has but a bare Right, shall be barred by a Fine levied by the Tertenant, and are within the 4 *H.* 7. and so are Copyholders; <sup>g</sup> for if a Copyholder

<sup>f</sup> 5 Co. 124. 2.  
<sup>9</sup> Co. 105. 2.  
Shep. Touch.  
<sup>22</sup>.  
Plowd. 374.

<sup>g</sup> 9 Co. 105. 2.  
Coke's Comp.  
Cop. 62.



holder be ousted, and the Lord disseised, and the Disseisor levies a Fine with Proclamations, and Five Years pass, the Lord, and the Copyholder are both barred.

\* 9 Co. 105. b.  
Plow. 374.

<sup>h</sup> A Distinction was formerly made between a Lease for Life, and a Lease for Years, or other Interest less than Freehold, for it was held in the latter Case, that he in Reversion, or Remainder was bound to pursue his Action within Five Years after the Fine levied, and Proclamations passed, or else that he should be barred as well as the Termor, because such Reversioner, or Remainder Man expectant upon a Term for Years might immediately have an Assize, or other Real Action, to recover the Freehold of the Land, and so was within the first Saving of the 4 H. 7.: Whereas he in Reversion, or Remainder upon an Estate of Freehold should have Five Years to make Claim after the Death of the Tenant for Life by the Second Saving, but this Distinction has since been overruled, <sup>i</sup> and it has been adjudged, that there is no Difference as to this Point between a Lessee for Life, or for Years, but that the Reversioner, or Remainder Man shall in neither Case be barred, till Five Years after the Determination of the particular Estate.

§ 2 Lev. 51.

\* 5 Co. 124.  
Saffyn's Case.

\* A Lease for Years was made, and before Entry of the Lessee, the Lessor levied a Fine with Proclamations, and Five Years passed without Entry, or Claim made by the Lessee, and it was adjudged, that he was barred by the 4 H. 7.

§ 1 Mod. 217.

<sup>1</sup> Upon a Trial at Bar the Court delivered for Law to the Jury, that if there be Tenant by Elegit of certain Lands, and a Fine is levied of those Lands, and Five Years with Nonclaim pass, the Interest of the Tenant by Elegit is bound,

bound, according to *Saffyn's Case*, otherwise, if the Land had not been actually extended; also if an Inquisition upon an Elegit be found, the Party before Entry has the Possession, and a Fine with Nonclaim will bar his Right.

<sup>m</sup> A Man destroys a contingent Remainder by levying a <sup>m Ld. Ray. 314.</sup> Fine, afterwards the Fine is annulled by Act of Parliament, and it was held, that the contingent Remainder was revived; but that if the Fine had been reversed for Error it had been otherwise.

<sup>n</sup> If a Fine is levied with Proclamations of Lands in ancient Demesne, the Lord is not barred by not bringing his <sup>n 1 Ld. Ray. 179.</sup> Writ of Deceit within Five Years, but he may bring it afterwards either against the Conusor, or Conusee, or their Heirs. <sup>1 Salk. 210.</sup>

<sup>o</sup> A Fine, and Nonclaim bars all Trusts, and Equity, <sup>o 1 Cha. Co. 278.</sup> where the Equity charges the Land; but where it charges <sup>3 Salk. 168.</sup> the Person in respect of the Lands, it will not bar, also an Equity, or Trust created by a Fine, shall never be barred by the same Fine.

<sup>p</sup> A Fine levied, by a Mortgagee in Possession, and Five <sup>p 1 Vern. 132.</sup> Years Nonclaim, will not bar the Mortgagor of his Equity of Redemption.

<sup>q</sup> Lands were devised by Trustees for Payment of Debts, and then to *A.* and his Heirs, *A.* being an Infant, *S.* enters, and levies a Fine with Proclamations, and Five Years pass, during the Nonage of *A.*, who, as soon as he comes to his full Age brings an Ejectment, but is barred at Law, because the Trustees, who had the legal Estate, and were of full Age, ought to have entered; however upon a Bill in <sup>q 2 Vern. 368.</sup> Chancery, <sup>369.</sup>

Chancery, it was decreed, that *A.* should recover the Possession, and mesne Profits, the Court declaring the Fine, and Nonclaim should not run upon the Trust in the Infant's Minority, nor he suffer for the Laches of his Trustees.

<sup>r</sup> 1 Vent. 82.  
<sup>1</sup> Lev. 272.

\* If a Man mortgages his Land, and still continues in Possession, and pays the Interest, and levies a Fine with Proclamations, and Five Years pass without Claim, yet the Mortgagee is not barred.

\* Co. Lit. 298.  
a.

\* If a Disseisor makes a Lease for Life, and afterwards levies a Fine of the Reversion with Proclamations, and Five Years pass, so as the Disseisee is barred for the Reversion, he shall not enter upon the Tenant for Life.

If *A.* is seized in Fee of Lands in Trust for *B.*, and *C.* enters upon, and disseises him, and then levies a Fine with Proclamations, and Five Years pass, this will bar as well *B.* the *Cestuique* Trust, as *A.* the Trustee, because the Title of *C.* is adverse to them both; but if *C.* had come to the Land by Title derived under *A.* the Trustee, then there are Two Cases, in which the Fine, and Nonclaim would not be any bar to *B.*, but the Land would still remain subject to the same Trust in the Hands of *C.* as it was subject to in the Hands of *A.* the Trustee; as First, if a Fine is levied from *A.* to *C.* without any Consideration, there, since *A.* was under a Trust, his Conveyance to *C.* will be under the same Trust. Secondly, if *A.* levies a Fine to *C.* for a valuable Consideration, *C.* having Notice of the Trust at the Time of his Purchase, or if *C.* himself after his Purchase levies a Fine, in order to strengthen his own Estate, yet such Fine, and Nonclaim is no Bar, because *C.* having purchased with Notice of the Trust, notwithstanding any Consideration paid by him, will be but a Trustee for *B.*, and so the Estate not being displaced, the Fine cannot bar; for wherever a Per-



son is charged as claiming under a Trustee, he must either set up an opposite Title, or else, if he claims under the Trustee, he must shew that he is a Purchaser *bonâ fide* for a valuable Consideration, and deny Notice of the Trust, otherwise his Fine, and Nonclaim will be no Bar.

\* Where a Trustee sells to One, who has no Notice of <sup>a 1 Vern. 60.</sup> the Trust, and a Fine is levied with Proclamations, and five Years pass, and the Trustee afterwards, for valuable Consideration really paid, purchases the Lands again of the Vendee, the Trustee notwithstanding the Fine, Proclamations, and Nonclaim, shall stand seized in Trust as at first, as if the Land had never been sold, nor any Fine levied.

If *Cestui que Trust* in Tail levies a Fine, it will have the same Operation to bar the Issue in Tail, as if the Fine had been levied of a legal Estate, and <sup>b Vern. 226.</sup> it has been said that such a Fine with Proclamations, and Five Years Nonclaim, will bar a Remainder of a Trust Estate.



## S E C T. X.

## Who are restrained from levying Fines.

**T**HOUGH I have already mentioned, in a foregoing Section, those Persons who ought not to levy Fines, by Reason of *general* Disabilities, arising either from natural Imbecility, or legal Incapacity, such as Infancy, Ideocy, Attainder, and the like, yet as there are some others, who do not properly fall under either of those Classes, being only restrained from levying Fines, amongst other Modes of Conveyance, by particular Statutes, and in *particular* Cases, it will be proper here to take Notice of them; and, first, They who are seized in Right of their Churches, as Archbishops, Bishops, Deans, and Chapters, Parsons, and the like, cannot levy a Fine to the Prejudice of their Successors.

1 El. c. 39.  
23 El. c. 1.  
23 El. c. 20.  
23 El. c. 10.

32 H. 8. c. 23.

Also, he who has an Estate of Freehold, or Inheritance, in the Right of his Wife in any Manors, Lands, *etc.* ought not to levy a Fine thereof without her, and if he does, it will make no Discontinuance, nor be prejudicial to the Wife, or her Heirs, or to such as are intitled to the same after her Death, but she, or her Heirs, and such other who shall be intitled, after her Decease, may enter according to their Rights, and Titles therein.

34 H. 8. c. 20.  
Ante 40.

So he, who has an Estate Tail by the King's Gift, or Provision, ought not to levy a Fine thereof, and if he does, it will be void as against the Issue in Tail, and the King.

So he, who has an Estate of Lands that are prohibited <sup>32 H. 8. c. 36. f. 3</sup> to be sold by Act of Parliament, ought not to levy a Fine of such Land.

Also, any Woman who has an Estate in Dower, for Life, <sup>11 H. 7. c. 20.</sup> or in Tail, jointly with her Husband, or only to herself, or to her Use in any Manors, Lands, *etc.* of the Inheritance, or Purchase of her Husband, or given to the Husband, and Wife in Tail, or for Life, by any of the Ancestors of the said Husband, or by any Person seized to the Use of the said Husband, or of his Ancestors, may not, either being Sole, or with any after-taken Husband, levy a Fine of such Manors, Lands, *etc.*; for if she grants a greater Estate thereof than for her own Life, this worketh a present Forfeiture, and the Person next intitled may enter immediately, and if such Fine is levied by her when sole, she is barred forever, but if the same is levied by her with an after-taken Husband, it works a Forfeiture only during his Life, and after his Death she may re-enter, and enjoy according to her former Estate; but if the Party next intitled will join with her in levying such Fine, then it will be good.





## S E C T. XI.

## How Fines may be avoided.

**I** COME now to shew, lastly, how Fines may be avoided; and this may be by several different Ways; as first, By Entry, Claim, or Action; 2. By Plea; 3. For Deceit, or Fraud; 4. By Writ of Error; and 5thly, In some Cases upon Motion.

And I. How Fines may be avoided by Entry, Claim, or Action. Within what Time the several Persons who have Right may avoid Fines by Entry, Claim, &c. has been sufficiently explained in Sect. 9.; only it is to be remembered, That no Claim, or Entry shall be sufficient to avoid any Fine levied with Proclamations, unless an Action be commenced thereupon, and prosecuted with Effect within a Year after making it.

<sup>4</sup> Ann. c. 16.  
f. 16.  
Ante 48.

<sup>5</sup> 3 Bur. 1897.

<sup>a</sup> There must be an actual Entry to avoid a Fine, and the Demise cannot be carried back beyond the actual Entry. In all other Cases the Confession of Lease, Entry, and Ouster is sufficient, and so it is now settled, that it is sufficient for an Ejectment brought upon a Condition broken; and this seems to have been the Law ever since the Time of Lord Chief Justice *Hale*.

<sup>6</sup> 2 Ld. Ray.  
750.

<sup>7</sup> 1 Vent. 42.

<sup>c</sup> Where the Plaintiff's Title was by a Remainder limited to him, and a Fine with Proclamations had been levied, but  
he

he within five Years after his Title accrued, sent two Persons to deliver Declarations in Ejectment on the Land, the Court resolved, that this was no Entry, or Claim to avoid the Fine, he having given no exprefs Authority to that Purpose, and that the Confession of Lease, Entry, and Ouster, by the Defendant, should not prejudice him in this Respect.

If a Man has only a Right of Action, and his Entry is taken away, there a Claim, or actual Entry, on the Land will not preserve his Right, or avoid the Fine, because though he has a Right to the Land, yet since he has not pursued it in the Manner the Law has prescribed, it is as ineffectual as if he had been quiet.

<sup>d</sup> A Man who has a Right of Entry may empower another <sup>d Moor, 450<sup>m</sup></sup> to enter for him, and such Entry is sufficient to avoid a Fine; for what another does by my Command, or Direction, is to be looked upon as my own Act: <sup>e</sup> But where a Man <sup>e Poph 108.</sup> enters in my Name without my Direction, this does not <sup>9 Co. 106. a.</sup> avoid the Fine, or preserve my Right, unless I agree to, and <sup>Co. Lit. 245.</sup> approve of the Entry within five Years.

<sup>f</sup> A Guardian by Nurture, or in Socage, may enter in the <sup>f 9 Co. 106. a.</sup> Name of an Infant, who has a Right of Entry, and that <sup>Shep. Touch.</sup> shall vest the Estate in the Infant, without any Command <sup>35.</sup> precedent, or Assent subsequent, for there is Privity betwixt them. And he in Reversion expectant upon an Estate for Life, or Years, or the Lord of a Tenant by Copy, &c. may well enter in the Name of the Tenant for Life, Lessee for Years, or Copyholder, and in his own Right to save as well his own Freehold, and Inheritance, as the said particular Interests, for they are Privies in Estate, and as the Entries of those particular Tenants shall avail the Lord, and Lessor in such Cases, so the Entry of the Lessor, or Lord, in  
6 the

the Names of the particular Tenants, shall avail them for the Privy of their Estates, and for the Preservation of their several Rights, without any Request precedent, or Assent subsequent.

<sup>1</sup> Chan. Caf.  
268. 278.

An Entry on the Land by a *Cestui que Trust* is no sufficient Claim to avoid a Fine, but it must be by *Subpœna* on a Bill filed in Equity.

<sup>2</sup> Shep. Touch.  
<sup>2</sup> Inst. 523.  
Dyer 290, 291.  
<sup>4</sup> H. 7. c. 24.  
f. 7.

2. By Plea. <sup>b</sup> As if neither the Conusor nor Conusee are seized of any Estate of Freehold, or Inheritance, in the Lands, or Tenements whereof the Fine is levied, any Stranger may avoid the Fine by pleading that *Partes Finis, nihil habuerunt Tempore levationis Finis*, but that he himself, or some other, whose Estate he hath, was seized at the Time of the Fine levied; yet this last Matter, tho' necessary to be pleaded, is not traversable, <sup>i</sup> but if it be found, that the Parties to the Fine had nothing, the Fine shall be avoided, although the Special Matter of the Seizin of himself, or of a Stranger, at the Time of the Fine levied, be not found.

<sup>\*</sup> Touch. 36.  
<sup>4</sup> H. 7. c. 24.  
L. 7.

<sup>k</sup> None can have this Plea, who is Party, or Privy.

<sup>1</sup> F. N. B. 219.  
<sup>12</sup> Co. 123.  
<sup>5</sup> Shep. Touch.  
36.  
<sup>7</sup> Co. Read. 9.

<sup>1</sup> If one in my Name levies a Fine of my Land, I may confess, and avoid this Fine by Pleading, that there are Two of my Name, one of *D.*, and another of *S.*, and that he of *D.* levied the Fine, and not I, who am of *S.*

<sup>m</sup> Shep. Touch.  
29.

III. For Deceit or Fraud. <sup>n</sup> Fines may be avoided, where they are obtained by Fraud, Covin, or Deceit, though there be no Error in the Process, and this may be done either by Writ of Disceit, or Averment, setting forth the Fraud, or Covin.

<sup>n</sup> 3 Co. 76. b.

<sup>n</sup> Where a Lessee for Years, or at Will, or Tenant by Copy of Court Roll, makes a Feoffment by Assent and  
Covin



Covin that a Fine may be levied, this Fine shall not bar those who have the Freehold, and Inheritance.

If a Fine be levied to secret Uses to deceive a Purchaser, <sup>o 3 Co. 80. a.</sup> an Averment of Fraud may be taken against it by the <sup>27 El. c. 4.</sup> 27 El. so if a Fine be levied upon an Usurious Contract, it may be avoided by Averment by the 13 El. c. 8.

If Tenant in Ancient Demesne levies a Fine at the Common Law, the Lord of ancient Demesne shall have a Writ of Disceit even Twenty Years afterwards, and shall annul the Fine, and shall restore himself to his Seignior, and his Tenant against his own Fine to the Land again in his former Estate; but the Parties to such Fine shall be fined, and imprisoned *pro deceptione Curiae*. <sup>p 4 Inst. 270.</sup> <sup>Plow. 370.</sup>

Although the Court of Chancery has a Power to relieve as much against a Fine obtained by Fraud, or Practice, as against any other Conveyance, yet that Court cannot set aside a Fine so obtained, nor have they ever sent the Plaintiff to the Common Pleas to set it aside, but they consider the Person obtaining the Estate even by Fine as a Trustee, and will Decree him to reconvey on the general Ground of laying hold of the ill Conscience of the Party, to make him do what is necessary to restore Matters as before. But for any Error in the Fine, or Irregularity, or ill Practice in the Commissioners, it is a Matter cognisable in the Court where the Fine was levied, and for which that Court may vacate the Fine. <sup>q Eq. Cas. Abr.</sup> <sup>259.</sup> <sup>1 Vez. 289.</sup>

IV. By Writ of Error. Which must be brought within Twenty Years after the Fine levied.

<sup>10 & 11 W. 3.</sup>  
<sup>c. 14.</sup>  
<sup>Ante 45.</sup>

None

<sup>1</sup>Rolls Abr.  
747.  
Dyer 90. a.

\* None shall have a Writ of Error unless he be Party, or Privy to the Judgment, and the Writ ought to be brought by him, who would have had the Thing whereof the erroneous Judgment was given, if no such Judgment had been, but if there be several Parties to an erroneous Fine, they shall all join with the Party who is to enjoy the Land for Conformity.

<sup>2</sup>Rolls Abr.  
757.  
Dyer, 89. b.

\* Nothing can be assigned for Error, that contradicts the Record, and therefore in a Writ of Error to reverse a Fine, it cannot be assigned for Error that the Conusor died before the *Teste* of the *Dedimus Potestatem*, for that is directly contrary to the Record of the Conusans taken by the Commissioners; but it may be assigned for Error, that after the Conusans taken by the Commissioners, and before it was certified, the Conusor died; for this is consistent with the Record.

<sup>3</sup>Co. 38. b.

\* The Conusans of a Fine, and a Grant, and Render shall have the like Construction as any other Conveyance between Party, and Party; and the Error to make a Fine voidable must be notorious, because the Act is done by Consent, and it is a Rule in Law, that *Consensus tollit errorem*.

<sup>4</sup>Rolls Abr.  
752.  
F. N. B. 45.  
Dyer, 89. b.  
274. Pl. 44.

\* If a Writ of Error is brought in the King's Bench upon any Judgment except a Fine, the Record itself, and not a Copy only, is removed there, but in a Writ of Error upon a Fine levied in the Common Pleas, the Transcript only is removed into the King's Bench, and upon the Transcript of the Note of the Fine, Errors shall be assigned, for there is no Chirographer to ingross it in the King's Bench: But if it appears to that Court, that the Fine ought to be reversed, then a *Certiorari* goes to the Chirographer to certify the very Note of the Fine, and when it comes up it is actually cancelled;

celled ; or a Writ may be sent to the Treasurer, and Chamberlains of the Exchequer to take the Fine off the File.

<sup>a</sup> The Use is to direct a Writ of Error to the Chief Justice <sup>a 5 Co. 39. b.</sup> of the Common Pleas, another to the *Custos Brevium* to certify *Transcript' Pedis Finis*, and another to the Chirographer to certify *Transcriptum Notæ Finis*.

<sup>b</sup> The Court will not reverse a Fine without a *Scire facias* <sup>b 1 Salk. 339. Dyer, 321.</sup> returned against the Tertenants, for the Conusees are but nominal Persons.

<sup>c</sup> Errors in Fines may be amended after the Transcript of <sup>c 5 Co. 43, 44.</sup> the Fine is removed by Writ of Error.

<sup>d</sup> Though a Transcript only is removed into the King's <sup>d 1 Salk. 337.</sup> Bench, yet where the Fine was affirmed, a Writ of Error *Coram vobis resident'* hath been allowed to lie there.

<sup>e</sup> The Conusor shall not assign Error in the Grant, and <sup>e 5 Co. 38. b.</sup> Render by which he himself took an Estate, no more than the Conusee shall do in the Conusans, for that is to defeat the Estate, that by the Fine is given to him.

<sup>f</sup> If there be no Original Writ, the Fine is voidable by <sup>f 2 Inst. 513, 514.</sup> Writ of Error, as also where there is an Original Writ, and the Fine is levied as well of that which is contained in the Writ, as of some other Thing that is not contained in it, as if the Writ of Covenant be of the Manor of *D.* and the Fine is of the Manor of *D.* and likewise of the Manor of *S.* it is voidable by Writ of Error for the Manor of *S.* Also a Fine is voidable by Writ of Error, if levied *immediately* to a Person not named in the Writ of Covenant.



<sup>g</sup> Dyer 182. b.  
216. a.

<sup>g</sup> If there is Error in the Proclamations to a Fine, the Proclamations only will be void, and reverfible by Writ of Error, and not the Fine itfelf, but the Fine will remain in force as a Fine at Common Law, and make a Difcontinuance.

<sup>h</sup> 1 Rolls Abr.  
788, 789.

<sup>h</sup> In a Writ of Error to reverfe a Fine a Release, or Feoffment of Part, is only a bar as to that Part, and the Court may reverfe the Fine for the Refidue.

<sup>i</sup> 1 Rolls  
Abr 775.  
F. N. B. 222.

<sup>i</sup> If a Fine is levied of Land of which Parcel is \*Gildable, and Parcel Ancient Demefne, and as to that which is Ancient Demefne the Fine is reverfed by Writ of Difceit; yet it fhall remain good for the Refidue, and a Mark fhall be made upon the Fine to cancel that which is Ancient Demefne only.

<sup>l</sup> 1 Co. 76. b.  
Shep. Touch.  
35.

<sup>l</sup> It is faid by Sir *Edward Coke*, and others, that if there be Tenant for Life, the Remainder in Fee to an Infant, and they both levy a Fine, and afterwards he in Remainder reverfes it for his Infancy, yet the Conufee fhall have the Land during the Life of the Tenant for Life. But in the Cafe <sup>k</sup> of *Zouch* and *Thompson*, in the 8 and 9 *Gul. III.* it was adjudged, that though a Fine may be reverfed as to Part of the Land, and remain good as to the Refidue, yet it cannot be reverfed *in toto* as to One Man, and remain good *in toto* as to another.

<sup>k</sup> 1 *Ld. Ray.*  
279.

<sup>l</sup> 1 Rolls Abr.  
788, 789.

<sup>l</sup> If Tenant in Tail levies an erroneous Fine with Proclamations, and after levies another erroneous Fine with Proclamations, and dies, and the Ifue in Tail brings a Writ

\* Land, *sub diftributione Curie Vicecomitis*. Land liable to pay Tax or Tribute. *Cunningham's Law Dict.*

of Error upon the first Fine, and the Defendant pleads in bar the second Fine, and afterwards the Issue brings a Writ of Error upon the second Fine, and the Defendant pleads in bar the first Fine, by which the Right is bound, the Plaintiff may reply upon the first Writ, that the second Fine is erroneous, and upon the second Writ, that the first Fine is erroneous, and so shall be aided.

In some Cases the Court of Common Pleas will set aside, and vacate a Fine upon Motion, although the King's Silver is paid, and the Fine compleat, without putting the Parties to the Trouble, and Expence of a Writ of Error, as where <sup>m</sup> one *Hutchinson*, and his Wife, she being within Age, levied a Fine of the Wife's Land, and paid the Kings Silver, and the Fine was compleat, and exemplified, but *upon Complaint* by the Remainder Man in Fee next after the Estate Tail of the Wife, the Husband, and Wife were brought into Court by *Rule*, and examined, whereby the levying of the Fine, and Infancy appeared: And the Court, upon like Precedents being found, now \* vacated this Fine, and caused the Exemplification to be brought into Court, and delivered up, and ordered an Information to be prosecuted against the Commissioners, who took the Conusans of the Fine. So in a <sup>n</sup> late Case, where the Conusor died before the Return of the Writ of Covenant, and this appeared to the Court *on Affidavits*, though the Fine had passed through all the Offices, yet it was set aside upon Motion.

<sup>m</sup> 3 Lev. 36.

<sup>n</sup> Watts v. Birkett 33 G. 2. 2 Wils. 145.

\* Note, The Vacat was entered, *quoad* the Wife only.

## S E C T. XII.

## \* Of Deeds Leading, or Declaring the Uses of Fines.

29 Car. 2. c. 3.

IT may not be improper here to subjoin a few general Rules with regard to the Uses to which a Fine shall enure, where it is levied either with, or without any Deed to lead, or declare the Uses of it, and shortly to observe how the Law stood as to this Point before the Statute of Frauds, and how it stands at this Day under that Act of Parliament, and the 4 Ann. c. 16. And first it is to be observed, that a Fine being a Common Law Conveyance, and operating by Transmutation of Possession, the Parties thereto may direct the Uses thereof to any Persons they chuse, and limit what Estates they think proper without any Consideration either of Money, or Blood : But if a Fine is levied without any Consideration ; and no Use thereof declared, the Use will result back to the Conusor in the same Nature as he had it before, just as it will to the Feoffor, or Recoverer in the Case of a Feoffment made, or Recovery suffered under the same Circumstances : And therefore if One seized in fee *ex parte maternâ* levies a Fine without Consideration, and declares no Use, the Use will result back to him again, and he will be seized as he was before to him, and his Heirs *ex parte*

\* What is contained in this Section is equally applicable to Deeds leading, and declaring the Uses of Common Recoveries.

If the Deed is made previous to the Fine, it is called a Deed to *lead* the Uses, if subsequent a Deed to *declare* them.

*materna.*



*materna* \*. So if two Jointenants, the one in Fee-simple, <sup>a 2 Co. 58. 2.</sup> and the other but for Life, levy a Fine without Consideration, and declare no Use, the Use shall be to them respectively of the same Estate as they had before in the Land. So if *A.* Tenant for Life, and *B.* in Reversion, or Remainder levy a Fine generally, the Use shall be to *A.* for Life, the Reversion, or Remainder to *B.* in Fee, for each grants that which he may lawfully grant, and each shall have the Use which the Law vests in them, according to the Estate which they convey over. So if *A.* be seized in Fee of One Acre, and he, and *B.* jointly levy a Fine of it to another without Consideration, and declare no Use, this shall be to the Use of *A.*, and his Heirs only. So if the Husband, and Wife levy a Fine of the Wife's Land without Consideration, and declare no Use, the Law will adjudge this to be to the Use of the Wife, and her Heirs. But if any Consideration of Money, or the like, is given, or any Rent reserved, or any Tenure created, as where the Estate given to the Conusee by the Fine is only in Tail, for Life, or Years, there the Law will adjudge the Use to the Conusee.

At the Common Law where a Fine was levied, and no Use thereof declared in writing, other Uses than those which the Construction of Law would have made, as is before mentioned, might have been proved by Parol Averment, that is, such Uses might have been shewn, and proved by the Testimony of Witnesses to have been agreed upon by the Parties to the Fine, and upon such Proof the Fine should have enured to those Uses accordingly: But where the Uses of a Fine had been declared by Writing, either previous to,

\* But where a Man so seized levied a Fine *sur consens de droit come ceo*, &c. and the Conusees granted, and rendered the Land to the Conusor in Tail, Remainder to him in Fee, this was held to be a *new Purchase*, and to go to the Heirs, *ex parte paterna*, and compared to the Case of a Feoffment, and Reinfcoffment. *Rice v. Langford*. *Carib.* 140.

or at the Time of levying the Fine, there no Parol Averment would have been received of any other Uses, than those so declared, provided the Fine was levied of such Lands, between such Parties, at such Time, and in such Manner, as was agreed upon in the Declaration of the Uses, for tho' notwithstanding a Variation in those Circumstances, the Fine would *Primâ facie* have been construed to have been levied to the Uses so before declared, where no other Uses were declared in Writing, yet that Construction, which the Law would have made, was liable to be controuled by Parol Averment of other Uses having been agreed upon between the Parties: And so where the Uses of a Fine were declared by Writing *subsequent* to the levying of the Fine, an Averment would also have been received of other Uses agreed upon *at*, or *before* the Time of levying the Fine. But now by the 29 Car. II. c. 3. *all Declarations, or Creations of Trusts, or Confidences of any Lands, Tenements, or Hereditaments shall be manifested, and proved by some Writing signed by the Party, who is by Law enabled to declare such Trust, or else they shall be utterly void, and of none effect.* But Trusts, or Confidences arising, or resulting by the Implication, or Construction of Law, or transferred, or extinguished by Act, or Operation of Law, are excepted, and remain as they were before this Act. And <sup>b</sup> where a Fine had been levied without any Consideration, and only in order to make the Conusee Tenant to the Præcipe for suffering a Common Recovery, but no Uses of the Fine were declared, it was objected, in order to set aside this Recovery, that the Uses of this Fine resulted back to the Conusor, and though the Intent might be to make the Conusee Tenant to the Præcipe, yet since the 29 Car. II. there could be no Averment of an Use, or Trust. But the Court held, That at the Common Law the Use of a Fine was always intended to be to the Conusee, and in pleading never was averred, that this Statute does not extend to Uses by Operation of Law, but

• 2 Balk. 676.

to such Uses as are to a third Person ; (*i. e.*) that neither the Conusor, nor Conusee of a Fine shall aver the Uses to be a third Person : And it was adjudged, That the Conusee was in immediately by the Fine, and a good Tenant to the Præcipe. By this Case I apprehend, that the Law is now settled, that where a Fine is levied to the Use of any Stranger, the Use must be declared *in Writing* †, or otherwise will be void, but that if no Use of the Fine is declared, a Parol Averment will still lie, notwithstanding the Statute of Frauds, as between the Conusor, and Conusee, to prove whether any Consideration was paid, or what was the Intention of the Parties, and to carry the Use to the Conusor, or Conusee accordingly..

After the Statute of Frauds it was doubted, whether it was not necessary to declare the Uses of the Fine, either at, or previous to the Time of the levying thereof, and whether a subsequent Declaration of the Uses would not have been void ; but now by the 4 *Annæ c. 16. s. 15.* such subsequent Declaration is declared to be good.

I shall now mention very briefly, by way of Conclusion, what Effect, and Operation the Law allows to Declarations of the Uses of Fines when made by Persons under the Disabilities of Infancy, Ideocy, or Coverture. With regard to the two former of these, the Law is, and I apprehend always has been, clearly settled, that if an Infant, or Ideot, has by any Neglect, or Contrivance been permitted to levy a Fine, his Declaration of the Uses thereof will be good so long as the Fine remains in Force, and if the Fine is never reversed his Declaration of the Uses will be binding, and conclusive.

† Even since the Statute of Frauds, Uses may be declared by Writing only without Seal. 7 *Mod. 76.*



on him, and his Heirs forever; and the Reason of that is, that the Law will not presume, that a Fine, which is a solemn Act on Record, has been levied by a Person under such Disabilities; and therefore until the Fine, which is the principal Act, is annulled for the Incapacity of the Party, his Declaration of the Uses thereof shall remain good †.

As to the Case of a Feme-covert, some nice Distinctions have been taken how far her Declaration of the Uses of a Conveyance will, or will not be good, and binding upon her. If she, and her Husband levy a Fine of her Land, and both join in the same Declaration of Uses, this is undoubtedly good; <sup>a</sup> for tho' the Deed of a Feme-covert is not valid in Law, yet the Deed, having Relation to the Fine, takes Validity from thence, and will conclude her. <sup>b</sup> If the Husband alone declares the Uses, and no other Uses are declared by the Wife, his Declaration will be good; for the Assent of the Wife will be presumed, unless the contrary appears, for when she joins with her Husband in the Fine, it shall be intended, if the Contrary cannot appear, that she joined also with him in Agreement in the Declaration of the Uses of the Fine. If they both declare the Uses separately, and agree as to the Uses of Part of the Land only, and differ as to the other Part, it will be good as far as they both agree, and void for the Residue, as if the Fine was levied of One Acre in *A.* and another in *B.* and they both declare the same Uses of the Acre in *A.* but differ as to those of the Acre in *B.*; there the Uses declared for *A.* shall take Effect only, and those declared for *B.* will be void. But if they differ in their Declaration of the Uses as to Part of the Estate of the Land,

† An Infant Covenants to levy a Fine by such a Time to such Uses, before the Time, he comes of Age, then the Fine is levied, and by another Deed made at full Age, he declares it to be to other Uses; the Court held the last Deed should be that which should lead the Uses. 1 Str. 94.

as if the Husband declares the Use to *A.*, for Life, Remainder to *C.* in Fee, and the Wife declares the Use to *B.* for Life, Remainder to *C.* in Fee, there, altho' the Variance is only in the first particular Estate, yet both Declarations are void for the Whole, because the Husband, tho' *sui juris*, yet as he has no Estate in the Land in his own Right, he cannot, against the Agreement of his Wife, limit the Use, and the Wife alone, tho' she is Owner of the Land, yet forasmuch as she is not *sui juris*, but under the Power of her Husband, she cannot, in respect of her Coverture, without her Husband, limit the Use; and therefore, in such Case, the Use will result back to the Wife, and her Heirs, as if no Declaration at all had been made.

F I N I S.

( 10 )

THE  
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## E R R A T A.

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|---|----------------------|
| Page 2. line 6. for <i>on</i> ,                     | read <i>in</i> .     |
| — 7. — <i>ult.</i> — <i>et</i> ,                    | — <i>and</i> .       |
| — 10. — 22. — <i>Judgement</i> ,                    | — <i>Judgment</i> .  |
| — 11. <i>Margin.</i> — <i>Dyer</i> , 220, 6.        | — 220, <i>b</i> .    |
| — 13. — <i>line 2.</i> — <i>servita</i> ,           | — <i>servitia</i> .  |
| — 19. <i>Margin ult.</i> <i>Yelverton</i> ,         | — <i>Yelverton</i> . |
| — 23. line 6. Delete the Comma at <i>Statutes</i> . |                      |

